(19,325.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1904.

## No. 243.

UNION PACIFIC RAILROAD COMPANY, APPELLANT,

*vs.*

MASON CITY AND FORT DODGE RAILROAD COMPANY

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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Note.—For evidence see additional volume.

Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, 1903, of said court, begun and held at the United States court house in the city of St. Louis, Missouri, on the first Monday in December, to-wit: the seventh day of December, A. D. 1903, and which said December term, 1903, was adjourned from the city of St. Louis, Missouri, to the city of St. Paul, Minnesota, as provided by law, before the Honorable Walter H. Sanborn, Honorable Willis Van Devanter and Honorable William C. Hook, circuit judges.

Attest:

[United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
*Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.*

Be it remembered that heretofore, to-wit: on the twenty-ninth day of August, A. D. 1903, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Nebraska, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein The Union Pacific Railroad Company was appellant, and The Mason City and Fort Dodge Railroad Company was appellee, which said transcript of record consisting of pages 1 to 272, inclusive, of the volume of pleadings and orders and pages 1 to 1077, inclusive, of the two volumes of testimony, is in the words and figures following, to-wit:

## United States Circuit Court, District of Nebraska.

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MASON CITY & FORT DODGE RAILROAD COMPANY,
*Complainant,*

AGAINST

UNION PACIFIC RAILROAD COMPANY,
*Defendant.*

---

*To the Honorable, the Judges of the United States Circuit Court, for the District of Nebraska:*

The Mason City & Fort Dodge Railroad Company, a railway corporation of the state of Iowa, brings this bill of complaint against the Union Pacific Railroad Company, a railway corporation of the state of Utah, and thereupon your orator states and alleges as follows, to-wit:

Your orator is a corporation created and organized under and by virtue of the laws of the state of Iowa, and owns a line of railroad extending from Manley Junction in the state of Iowa, to Fort Dodge in the state of Iowa, and from Clarion, Iowa, to Hampton, Iowa, and its said lines of railroad connect with the lines of the Chicago Great Western Railway Company at Manley Junction, Iowa, and at Hampton,

Iowa, and with the said lines of railway of the said Chicago Great Western Railway Company constitute a through line from Chicago, Illinois, to St. Paul and Minneapolis, Minnesota, and to Kansas City in the state of Missouri, and to Fort Dodge in the state of Iowa. That your orator is engaged in constructing an extension of this line of railway from Fort Dodge, Iowa, to Council Bluffs, Iowa, to a connection with the railroad of the Union Pacific Railroad Company, the defendant in this action; that it has purchased and acquired its terminals in the city of Council Bluffs, has acquired the right of way for its said line of railway, and the railway is partially constructed and will be completed to a junction with the Union Pacific Railroad in Council Bluffs, Iowa, on or about the month of April, 1903.

That The Union Pacific Railroad Company was duly incorporated and organized under and by virtue of an Act of Congress of the United States, entitled, "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1st, 1862, and that as so organized said Railroad Company possessed the powers and was made subject to the duties, obligations, and restric-

tions granted and prescribed in the said Act. That said Act of Congress was amended by an act entitled, "An Act to amend an Act entitled, 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July 1, 1862,'" approved July 2nd, 1864.

That the said The Union Pacific Railroad Company, as so incorporated, was by said Acts of Congress, authorized to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph, with the appurtenances, from a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and north margin of the valley of the Platte River, in the territory of Nebraska, at a point to be fixed by the President of the United States after actual surveys, thence running westerly upon the most direct, central, and practicable route, through the territories of the United States, to the western boundary of the territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad of California, and also to construct a single line of railroad and telegraph from a point on the western boundary of the state of Iowa to be fixed by

the President of the United States upon the most direct and practicable route to be subject to his approval, so as to form a connection with the lines of said company on the one hundredth meridian of longitude as aforesaid, from the point of commencement on the western boundary of the state of Iowa. And said railroad company was, by the terms of said Acts, vested with all the powers, privileges and immunities necessary to carry into effect the purposes of said Acts as therein set forth.

That there was also granted by said Act of Congress to the said The Union Pacific Railroad Company, the right of way to the extent of two hundred feet in width on each side of said railroad where it passed over public lands, including all necessary stations, buildings, workshops, and depots, machine shops, switches, side-tracks, turn-tables, and water stations, for the construction of said railroad and telegraph line, with the right, power, and authority to said company to take from the public lands adjacent to the line of said railroad, earth, stone, timbers, and other materials for the construction thereof, and also the right to condemn lands for necessary right of way not exceeding 100 feet in width on each side of the center line of said railroad, unless greater width be required for the purpose of excavation and embank-

ment, and also necessary lands for turnouts, standing places for cars, station houses, or any other structures required.

That in order to secure the construction of said railroad, Congress, in and by the Act of 1862, granted to said railroad company every alternate section of public land designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad on the line thereof within the limits of ten miles on each side of said road not sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road was definitely fixed. That by the Act of 1864 the said grant was increased to ten (10) sections per mile within the limits of twenty (20) miles on each side of said road, and other amendments were made in relation thereto, reference to which said Acts is hereby made for greater certainty. That said grants of land conferred upon said railroad company by Congress were accepted, and the said railroad company received many millions of dollars worth of lands to aid in the construction of said road.

That in addition thereto Congress provided, by said Act of 1862, for the issuance of sixteen thousand dollars ($16,000) per mile of government bonds for

each section of forty (40) miles of said railroad, an
forty-eight thousand dollars ($48,000) per mile fo
not exceeding three hundred (300) miles of moun
tainous road of difficult construction, and that th
government did issue, under the terms of said Act
of Congress and amendments thereof, twenty-seve
millions, two hundred and thirty-six thousand, fiv
hundred and twelve dollars ($27,236,512) of bonds t
aid in the construction of said road. That, as pro
vided by the said Acts of Congress, on the sevent
day of March, 1864, Abraham Lincoln, President o
the United States, did, upon the application of sai
Railroad Company, designate and establish as th
point on the western boundary of the state of Iow
from which the said The Union Pacific Railroad Com
pany should construct its said line and telegraph un
der the authority of said Act, a point in the wester
boundary of the state of Iowa east of and opposite t
the east line of Section 10 in Township 15 north o
Range 13 and east of the Sixth Principal Meridian i
the Territory of Nebraska. That the said The Unio
Pacific Railroad Company, acting under the authorit
of said Acts of Congress of July 1, 1862, and July 2
1864, commenced the construction of its line of rai
road and telegraph upon the route designated in sai
Acts, during the year 1864, and that it complete

thereof what was designated as the first section of forty miles west from the city of Omaha, prior to December 31, 1865, commencing at a point on the west bank of the Missouri River and within and near the northeast corner of said Section 10, Township 15, Range 13, in Nebraska.

That the President of the United States, on December 23d, 1865, pursuant to the provisions of Section 4 of said Act of July 1, 1862, and Section 6 of said Act of July 2, 1864, appointed Lieut.-Col. J. H. Simpson, Honorable Samuel R. Curtis and Honorable William M. White as Commissioners to examine and report to him in relation to the portion of said railway and telegraph line so constructed. That on January 8th, 1866, the said Railroad Company reported to said Commissioners that it had constructed and completed the first forty miles of said section, commencing at the north line of Section 10, Township 15, Range 13, Nebraska Territory; and that on January 23d, 1866, the Commissioners submitted their report upon said section of forty miles, stating that the same was completed as provided by the Acts of Congress, which said report was approved by the President on the 23d day of January, 1866, and that thereafter successive sections of said railroad were completed from time to time, reported upon by the

Commissioners and approved by the President, t
which reports and approval reference is hereby mad
for greater certainty.

That pursuant to the Act of Congress, the com
mon point of terminus between The Union Pacifi
Railroad Company's line of railroad and the line o
the Central Pacific Railroad Company, became an
wasfixed at a point about five miles northwest of Ogden
in the Territory (now state) of Utah, and distant fro
the point at which the construction of the line of sai
railroad was so commenced in Section 10, Townshi
15, Range 13, in Nebraska, one thousand and thirty
eight and forty-three one hundredths (1038.43) mile
along the present line of said railroad. That bond
and patents of land were issued for said line so co
structed, but no Government bonds or patents fo
lands were issued for the bridge and its approaches
as hereinafter set forth and defined in this bill.

That at the time the construction of said railroa
was commenced the boundary line between the stat
of Iowa and the state of Nebraska was the channe
of the Missouri River, and it was necessary to hav
constructed a railroad bridge across the Missou
River in order to construct said The Union Pacifi
Railroad to the point on the western line of the Stat
of Iowa so fixed by the President as the eastern te

minus of said railroad; that the said eastern terminus so fixed was embraced within a part of the city of Council Bluffs in the state of Iowa; that said Railroad Company acquired lands and terminals and bridge approaches in said Council Bluffs in and about the year 1866, which terminal grounds are the same as those upon which the present terminal station of the Union Pacific Railroad Company is situated. That in the year 1871 Congress passed an Act entitled, "An Act to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa," which Act was approved February 24, 1871, and was as follows, to-wit: (16 Stat., 430.)

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the more perfect connection of any railroads that are or shall be constructed to the Missouri River, at or near Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company be, and it is hereby, authorized to issue such bonds, and secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct

and maintain its bridge over said river, and the tracks and depots required to perfect the same, as now authorized by law of Congress; and said bridge may be so constructed as to provide for the passage of ordinary vehicles and travel, and said company may levy and collect tolls and charges for the use of the same; and for the use and protection of said bridge and property, the Union Pacific Railway Company shall be empowered, governed, and limited by the provisions of the act entitled 'An Act to authorize the construction of certain bridges, and to establish them as post roads,' approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto: And provided, That nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company, or its successors, from its obligations as established by existing laws: Provided also, That Congress shall at all times have power to regulate said bridge, and the rates for the transportation of freight and passengers over the same, and the

local travel hereinbefore provided for. And the amount of bonds herein authorized shall not exceed two and a half millions of dollars: Provided, That if said bridge shall be constructed as a drawbridge, the same shall be constructed with spans of not less than two hundred feet in length in the clear on each side of the central or pivot pier of the draw."

That it was provided by the Act of Congress of uly 25, 1866, referred to in the foregoing section, mong other things as follows: (14 Stat., 244.)

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose, to build a bridge across the Mississippi River at Quincy, Illinois, and to lay on and over said bridge railway tracks, for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to

cross said bridge for reasonable compensation, to be made to the owners of said bridge, under the limitations and conditions hereinafter provided. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said river, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches."

That in aiding the construction of said Union Pacific Railroad, and in fixing the eastern terminus thereof in the City of Council Bluffs, on the east bank of the Missouri River, and in authorizing the construction of the said bridge and its approaches, and tracks and depots required to perfect the same, and the raising of money by mortgage to build the same, it was the intention of Congress to provide for a more perfect connection of all railroads which had been, or might thereafter be, built to or near Council Bluffs, in Iowa, with any railroad that was at said time, or should thereafter be, constructed from the West to or near Omaha, so that all of the said roads should form connected and continuous lines of railroads, and to carry such intention into effect said Acts provided that any railroad then constructed, or which should

thereafter be constructed, to or near Council Bluffs from the East, and any railroad constructed, or which thereafter should be constructed, to or near Omaha from the West, should have the use of said bridge and its approaches, together with tracks and depots required to perfect the same, as so authorized by said Acts of Congress.

That as authorized by the said Acts of Congress, and with the money raised by the bridge mortgages as hereinafter alleged, the said Union Pacific Railroad Company during the years 1871 and 1872 constructed a bridge across the Missouri river, and tracks and depots connected therewith, extending from the eastern terminus of the Union Pacific Railroad Company at Council Bluffs in the State of Iowa to a point at about Twentieth Street in the City of Omaha, a distance of about 3.98 miles; that thereafter the Union Pacific Railroad Company and its successor, the consolidated Union Pacific Railway Company, as authorized by said Acts of Congress extended the said tracks so crossing said bridge from said point at about Twentieth Street in the City of Omaha to and through South Omaha there connecting with the original tracks of the Union Pacific Railroad Company, and from time to time added additional tracks thereto between the eastern terminus of said Union

Pacific Railroad Company in Council Bluffs and th
said South Omaha until at the present time the sai
bridge and its approaches comprise a large number o
tracks, side tracks, yards, the depot in Omaha an
the tracks connected therewith. That as to th
said bridge and approaches so constructed no subsid
bonds or patents of lands were delivered by th
United States, but that the same was constructe
as authorized by said Act of Congress of 1871, an
under the said authority and subject to the condition
and limitations as to the use thereof by other rai
roads as hereinbefore specified.

That said Railway Company did make, execut
and deliver a mortgage upon said bridge and its ap
proaches dated April 1st, 1871, to secure an issue o
bridge bonds each for the sum of one thousand dol
lars ($1,000) in United States gold coin, a copy o
which said mortgage is hereto attached marked "Com
plainant's Exhibit 1," and made a part of this bill o
complaint.

That on the 27th day of April, 1871, the sai
Union Pacific Railroad Company made, executed, an
delivered a supplemental mortgage on said bridge an
approaches, a copy of which is hereto attached marke
as "Complainant's Exhibit 2." That said mortgag
and supplemental mortgage were duly recorded i

the office of the Register of Deeds of Pottawattomie County, Iowa, on the 3rd day of October, 1871; and that said original mortgage was duly recorded in the office of the Register of Deeds of Douglas County, Nebraska, on the 3d day of October, A. D. 1871.

That bonds to the extent of two million, five hundred thousand dollars ($2,500,000) in gold coin, or five hundred thousand pounds (500,000) British sterling money, in two thousand five hundred (2,500) bonds, numbered from one (1) to two thousand five hundred (2,500) inclusive, with interest coupons thereto attached, were duly issued, certified by the trustee, negotiated and delivered, for value, to a large number of persons.

That the Union Pacific Railway Company was a consolidated corporation under the Acts of Congress of July 1, 1862, and July 2, 1864, and the Acts amendatory thereof and supplemental thereto, and consisted of a consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, which consolidation took place about January 24th, 1880, and the said Union Pacific Railway Company so created by the said consolidation of the said railway companies thereupon became the successor to each and all of the properties, rights, title, interest,

franchises, and subject to all of the burdens and conditions imposed upon the said Union Pacific Railroad Company, including the said line of railway, the said bridge and its approaches, terminals and other property.

That thereafter and on or about the first day of October, 1885, the said Union Pacific Railway Company made, executed, and delivered to the Central Trust Company of New York, the Omaha Bridge Renewal Mortgage upon the said bridge and approaches and appurtenances, and that a copy of said mortgage is hereto attached marked "Complainant's Exhibit 3." That said mortgage was duly filed for record in the office of the Recorder of Deeds in Pottawattamnie County, Iowa, on the 28th day of May, 1887, at one-thirty (1:30) o'clock p. m., and recorded in Book 199, on page 390 of the County records; and that said mortgage was also filed for record in the office of the County Clerk of Douglas County, Nebraska, on the 20th day of May, A. D. 1887, at four-thirty (4:30) o'clock p. m., and recorded in Book 63 of Mortgages on page 273. That one million, six hundred and twelve thousand dollars ($1,612,000) of bonds were issued under said mortgage. That the said property was described in said mortgage as follows, to-wit:

COPY BOUND CLOSE IN CENTER

"That the said railway company, in consideration of the premises and in order to secure the punctual payment of the principal and interest of the said Bridge Renewal bonds, to be issued as aforesaid, doth by these presents grant, bargain, sell, assign, transfer, and convey unto the said party of the second part, trustee as aforesaid, and to its successors and assigns, as such trustee, all and singular the bridge, approaches, and appurtenances thereto, over the Missouri River, between Council Bluffs, Iowa, and Omaha, Nebraska, mentioned and described in said Act of Congress, approved February 24, 1871, together with the rents, earnings, issues, tolls, incomes and profits thereof, including all parts and portions of said bridge, now constructed or hereafter to be constructed, and the depots, at Council Bluffs and Omaha aforesaid, and the railroad thereover, and the lines under tracks required to perfect said bridge its approaches and appurtenances, and to connect the same, with the lines of any railroad that are now, or shall hereafter be, constructed to the Missouri River at Council Bluffs, Iowa, or Omaha, Nebraska, a map and description representing and describing the general features

of which property is hereto annexed and made a part hereof; but the same shall not be considered exclusive of other property covered hereby; and also all the estates, lines, rights of way, as well now held by the company as to be hereafter acquired by it, and all the rights and privileges of the company of, in or to the said bridge, approaches, and appurtenances, or touching, concerning, or appertaining to the maintenance, use, or occupation thereof; and also all and singular the franchises now owned, possessed, or acquired, or which shall hereafter be owned, possessed, or acquired, by said railway company in respect of said bridge, approaches, and appurtenances thereto, and railroad thereover."

That for the purpose of aiding the said Union Pacific Railroad Company in the construction of said bridge and its approaches, including depot grounds in the City of Omaha, for a site for its passenger depot, and for facilities for the transfer of passengers and freight between it and other railroads terminating in said City, and terminating at Council Bluffs, the eastern terminus of said railroad, and for the purpose of allowing all other railroads free access into

said City of Omaha, and the unobstructed access and transit to and over said bridge and its approaches, and the use of said passenger station, the City of Omaha and County of Douglas in the State of Nebraska, on or about the year 1869 voted a large number of bonds, to-wit, the said City of Omaha, two hundred thousand dollars ($200,000), and the said County of Douglas, two hundred and fifty thousand dollars ($250,000); that a part of the said City bonds were used for the purchase of real estate, and that part of said real estate was also donated by private individuals; and that all of said bonds were voted, and said real estate was donated, to the said Union Pacific Railroad Company, and accepted by said Union Pacific Railroad Company, subject to the covenants and conditions and obligations contained in that certain contract made and entered into between the Union Pacific Railroad Company, and its successors, party of the first part, and the City of Omaha, Nebraska, and the County of Douglas in the State of Nebraska, parties of the second part, which said contract is contained in the body of the deed of said lands by Alvin Saunders, Trustee, to the Union Pacific Railroad Company, which deed is in the words and figures following, to-wit:

"ALVIN SAUNDERS, TRUSTEE,
To
THE U. P. R. R. COMPANY.

This indenture made this twentieth day of January, in the year one thousand eight hundred and seventy-two by and between Alvin Saunders, Trustee of the City of Omaha, in the State of Nebraska, party of the first part, and the Union Pacific Railroad Company, party of the second part, Witnesseth, Whereas, the real estate and premises hereinafter described were conveyed to said party of the first part by divers persons under the direction of a commission or board of adjustment, appointed by the City of Omaha to make settlement with the owners of certain lots and lands required by the said party of the second part for depot and transfer grounds and grounds for right of way, connected with its bridge over the Missouri River, all of which lands and premises were paid for by the said City of Omaha and conveyed to the said party of the first part as aforesaid, to be by him held in trust for said City during the time required to make such settlement or adjustment, and afterwards to convey the same to the said party of the second part hereto when directed so to do by said City of Omaha, with such restrictions and limitations as might be deemed necessary to protect

the interests of said City, all of which will more fully appear on reference to a certain instrument in writing containing a formal declaration of said trust, executed by the said Alvin Saunders on the thirty-first day of August, one thousand eight hundred and sixty-nine and recorded on the first day of September one thousand eight hundred and sixty-nine in Book Seven of Deeds at page two hundred and seventy-seven of the Records of Douglas County in the State of Nebraska.

And Whereas, the City Council of said City of Omaha by resolution passed on the second day of January one thousand, eight hundred and seventy-two, did direct the said party of the first part to make, execute and cause to be delivered to said party of the second part, a deed to the said real estate, and premises hereinafter described, subject to the terms, conditions and restrictions of a certain contract of which the following is a copy to-wit:

'Agreement made this first day of January in the 'year of our Lord one thousand eight hundred and 'seventy-two by and between the Union Pacific Railroad 'Company Authorized by law of Congress to build a 'bridge across the Missouri River at or near Council 'Bluffs, Iowa, and Omaha, Nebraska, and its successors, 'party of the first part, and the City of Omaha, Ne-

'braska, and the County of Douglas in the State
'Nebraska, parties of the second part, Witnesseth, th
'whereas, the parties hereunto desire to arrange for t
'more perfect connection of any Rail Roads that are
'shall be constructed to the Missouri River at or ne
'Council Bluffs, Iowa, and Omaha, Nebraska.

'Now, in consideration of the premises and t
'receipt by the party of the first part of the Bonds
'said Douglas County, to the amount of Two hundr
'and fifty thousand dollars and in further consider
'tion of the receipt by the party of the first part of
'deed from the said City of Omaha to certain re
'estate in said City known as the Depot grounds a
'right of way

'The party of the first part for itself and its su
'cessors, covenants and agrees to and with the sa
'County of Douglas and the said City of Omaha
'follows, to-wit:

'*First.* That it will construct, complete a
'maintain a Rail Road Bridge over the Missouri Riv
'at the said City of Omaha.

'*Second.* The the eastern terminus of the Uni
'Pacific Rail Road shall be and remain at said City
Omaha.

'*Third.* That after its Missouri River Bridge
'the City of Omaha is completed and ready for u

'the said Union Pacific Rail Road Company will make 'up all its regular West bound passenger and freight 'trains on the grounds which the people and City of 'Omaha propose as above to deed to said Union Paci- 'fic Rail Road Company and as is already mapped and 'platted, that is to say, All passengers and freights 'coming from the East on all lines of road seeking a 'connection with said Union Pacific Rail Road at its Eastern terminus, shall be delivered and transferred 'to the Union Pacific Rail Road Company upon said 'Depot grounds where the Union Pacific trains shall 'be made up for the West, and that said party of the 'first part will, after such bridge completion transfer 'upon said grounds to the various Rail Roads, 'that do or may begin or end in Council Bluffs or 'Omaha, all its passengers, baggage, express matter, 'mails and freight, North, East or South bound.

'*Fourth.* That said Union Pacific Rail Road 'Company will within one year from the date hereof, 'expend in improvements in the building of passenger 'and freight depots, general passenger and freight 'offices, Land offices and transfer and telegraph offices upon said grounds, a sum that shall not be less than 'one hundred thousand dollars and to maintain these 'buildings and offices thereon.

'*Fifth.* All machine, car shops and other manu-

'factories required for the use of said Company, at its
'Eastern terminus, all permanent offices of the Com-
'pany required for the transaction of its business, in-
'cluding the land department, general Superintend-
'ent's Offices, General Passenger and Freight Offices,
'Warehouses for the Company's use &c. shall be
'erected and maintained at Omaha.

'*Sixth.* That under proper rules for their regu-
'lation to be prescribed by said party of the first part,
'the trains, cars and engines of all Rail Roads now or
'hereafter running into or out of Omaha and Council
'Bluffs shall have unobstructed access and transit to
'and over said Bridge and its approaches and such
'roads shall have the right to take or cause to be
'taken their trains, cars and engines, with their
'freight and passengers over and across said Bridge
'and its approaches at reasonable compensation with-
'out discrimination, hindrance, preference or delay.
'Provided, however, that the Union Pacific Rail Road
'Company shall in all cases have the option of substi-
'tuting its own engines for those of such other roads
'in the operating of its said Bridge, receiving reason-
'able compensation therefor. The object of this
'clause being to make a virtual and operating connec-
'tion upon said transfer grounds, between all the Rail
'Roads desiring such connection which do or may be

'gin or end in or pass through Omaha or Council Bluffs and the trains and business of said Roads. In 'Witness Whereof, the said party of the first part has 'caused these presents to be executed in triplicate by 'its Vice President hereby binding said Union Pacific 'Rail Road Company and its successors to the cove- 'nants and agreements herein contained, and the par- ties of the second part, by their authorized officers 'have hereunto set their hands in triplicate the day 'and year first above written.'

Which said contract was duly executed and deliv- ered by the triplicate parties thereto.

Now therefore in consideration of the premises and the sum of One Dollar, in hand paid, the receipt of which is hereby acknowledged, the said party of the first part does hereby grant, sell and convey unto the said party of the second part, and to its succes- sors, the following described real estate, situate in the City of Omaha, County of Douglas, and State of Nebraska, and bounded and described as follows, that is to say: Lots six and seven in block two hundred and one. Lots five, six, seven and eight in block two hundred and two. Lots five, six, seven and eight in block two hundred and four. Lots five, six and seven in block two hundred and fifteen. Lots five, six, seven and eight in block two hundred and sixteen.

Lots one, two, three, four, five, six, seven and eight in block two hundred and seventeen.

Lots one, two, three, four, five, six, seven and eight in block two hundred and eighteen.

Lots one, two, three, four and eight in block two hundred and nineteen.

Lots three and four in block two hundred and twenty-three.

Lots seven, and all that part of lot eight not heretofore conveyed to said Rail Road Company, in block two hundred and twenty-four. The undivided one-half of lot eight in block two hundred and twenty-six. Lot four in block two hundred and twenty-seven. Lot one in block two hundred and thirty-four.

Lots one, two, three, four, and the south eighty-seven feet of lot eight in block two hundred and thirty-five.

Lots two, four, five, six and seven in block two hundred and thirty-six.

Also the following described fractional parts of certain other lots, in said City of Omaha, being those parts of the same embraced within the lines of said depot and transfer grounds and grounds for right-of-way as shown upon the plat of said grounds, on file in the office of the Probate Judge of said County of Douglas, the same as conveyed to me, as hereinbefore

set forth and being the approximate area in square feet off from each of such lots as here described, that is to say, the Southerly forty-six hundred and twenty square feet of lot five and the Southerly seventy-five hundred and ninety square feet of lot eight in block two hundred and one. The Southerly sixty-six hundred and ninety-nine square feet of lot five. The Southerly fifty-seven hundred and seventy-five square feet of lot six. The Southerly forty-five hundred and fifty-four square feet of lot seven, and the Southerly twenty-nine hundred and four square feet of lot eight in Block two hundred and three.

The Southerly thirteen hundred and eighty-six square feet of lot two, and the Southerly twenty-seven hundred and six square feet of lot three in block two hundred and four. The Southerly twenty-five hundred and eight square feet of Lot eight in Block two hundred and five. The Northerly thirty-three hundred square feet of lot five. The Northerly forty-six hundred and twenty square feet of lot six, and the Northerly fifty-nine hundred and forty square feet of lot seven in Block two hundred and nineteen. The Northerly eleven hundred and fifty-five square feet of lot four in Block two hundred and twenty-two. The Northerly fifty-six hundred and ten square feet of lot one in Block two hundred and twenty-three. The Northerly

fifty-six hundred and ten square feet of lot two, the Northerly forty-one hundred and ninety-one square feet of lot three, and the Northerly twenty-seven hundred and six square feet of lot four in Block two hundred and thirty-four.

The Northerly six hundred and sixty square feet of lot five, the Northerly twenty-three hundred and ten square feet of lot six and the Northerly forty-four hundred and fifty-five square feet of lot seven in Block two hundred and thirty-five.

Also a tract of land bounded and described as follows: Commencing at a point three hundred and forty-six feet North of the Southwest corner of lot four in Section twenty-three, in Township fifteen, North of Range thirteen, East of the Sixth Principal Meridian, and running thence North fifty feet, thence East four hundred and ten feet, thence South fifty feet, and thence West four hundred and ten feet to the place of beginning. Also the South half of the following tract of land bounded as follows, to-wit:

Commencing at a point thirty-two rods North of the Southwest corner of fractional lot four in Section twenty-three, in Township fifteen, North of Range thirteen, East of the Sixth Principal Meridian, thence South along the West line of said lot one hundred and thirty-two feet, thence East one hundred and

ninety-eight feet, thence North one hundred and thirty-two feet, thence West one hundred and ninety-eight feet to the place of beginning, the same being in section twenty-three in said Township and Range, hereby limiting the use of all said premises to the legitimate purposes of depot and transfer grounds and grounds for right-of-way and approaches to the said Missouri River Bridge, subject to the conditions and restrictions contained in the contract above recited, and provided further that in case said premises or any part thereof, be abandoned or disused or converted to any other than the uses and purposes hereinbefore limited, then the same shall revert to and become the property of the said City of Omaha.

In Testimony Whereof the party of the first part has hereunto set his hand the day and year first above written.

ALVIN SAUNDERS,
*Trustee.*

In Presence of
W. B. BEND,
A. J. POPPLETON.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, }

On this twenty-sixth day of January, 1872, before me a Notary Public in and for said County, personally appeared Alvin Saunders, Trustee, to me per-

sonally known to be the identical person whose name is subscribed to the foregoing instrument as grantor, and he acknowledged the execution thereof to be his voluntary act and deed as such Trustee.

Witness my hand and Notarial Seal the date aforesaid.

(SEAL) W. B. BEND,
*Notary Public.*

Recorded February 2nd, 1872, at 2¼ O-clock P. M.
WM. H. IJAMS,
*County Clerk.*"

That said deed was duly recorded in the office of the County Clerk of Douglas County, Nebraska, on the second day of February, 1872, at 2:15 o'clock P. M. of said day, in Book 12 of Deeds, page 220; that the said real estate therein described is the real estate which was purchased by the bonds so voted by the said City, and also donated by private subscription, and that said donation was accepted by the said Union Pacific Railroad Company on the terms, covenants and conditions therein named which were, and are, binding upon the said Union Pacific Railroad Company, and its successors, and all other companies coming into the possession of, or use of, said property; and the said contract became, and is, an irrevocable

ontract running with the said property for the enefit of any other railroad company that might hereafter construct a railroad to Omaha or Council Bluffs, as in said contract and deed provided; that the pproaches to said bridge on the west side of the Missouri River, the passenger station, and the track nd terminal grounds, so known as the bridge and its pproaches, are now situated on, over and across said roperty, and the said property has ever since said ime been used by the said Union Pacific Railroad Company, and its successors, the Consolidated Union Pacific Railway Company, and the defendant, the Union Pacific Railroad Company, as a part of the said bridge and its approaches, including its present depot, and tracks, and grounds connected therewith.

That on or about the year 1889 the Union Pacific Railway Company and the Chicago, Burlington & Quincy Railway Company entered into a plan and agreement for the construction of a union depot in the City of Omaha, and pursuant to the said agreement the Omaha Union Depot Company was organized under the laws of Nebraska, and it was proposed to convey to said company the real estate described in said deed of Alvin Saunders, Trustee, to the Union Pacific Railroad Company, and the said City of Omaha proposed to quitclaim and release to the said Union

Depot Company its rights in and to the said rea
estate described in the said Saunders deed, thereb
releasing the said Union Pacific Railway Compan
from the conditions and obligations of said donation
that thereupon, and on or about the 6th day o
January, 1891, one Ernest Stuht and John D. How
brought an action against the said City of Omaha
Richard C. Cushing, its Mayor, Charles S. Goodrich
its City Comptroller, The Omaha Union Depot Com
pany (of Omaha), Alvin Saunders, Thomas L. Kim
ball, President of said Union Depot Company, and
Thomas H. Benton, in the District Court for Dougla
County, Nebraska, alleging the said facts; that the
court then and there had, and acquired, jurisdiction
of the said parties, and the subject matter; that issue
was duly joined therein, and such proceedings were
had therein on or about the year 1892, that judgment
was duly rendered and given therein enjoining the
said City from issuing said bonds, and from convey
ing, or releasing the said obligations, covenants, and
agreements, contained in said deed of donation· and
the said District Court in rendering its said opinion
and judgment, among other things held and decided
as follows, to-wit:

"Another question remains to be considered, namely, the proposed conveyance by quit claim deed from the City to the railroad company of the land in question. We hold that this property is impressed with the trust set forth in the deed of 1872. The Mayor and City Council have no lawful authority to make such conveyance. If such were made it would not estop the city from any contingent interest in said property, or bind it upon a reversion of the property. Such a deed would be a mere nullity. The legal title to this land has never been in the city. The inhabitants thereof bought the land, by the bonds voted in 1869, and had it conveyed direct from the grantors to a trustee in trust and by him conveyed to the railroad company. Any reversion would ensue to the benefit of the inhabitants generally; and in the matter of the re-conveyance as proposed by the city, the Mayor and Council only act by express authority. The City Council as such, is an organization under the law of well defined and limited powers. If they seek to go beyond this limit, they must first ask and obtain such authority from the people, or the people must grant it upon their

own motion. Any power or authority fr
the Council to make this re-conveyance m
first be granted them by the sovereign power;
cannot be assumed by the delegate.

We do not think that under the Sau
ders conveyance to the railroad company, t
this requires that company always to own a
possess the land; but simply that said la
shall be used for the purposes expressed in t
contract and deed of 1872. If the compa
transfers the same to the defendant, the Uni
Depot Co. under the same conditions and li
tations and the premises are used for th
purposes with the admission of all connecti
roads to the benefits of terminal facilities a
other conditions of same part be complied wi
there would in such case, be no violation
the conditions and no reversion.

It is not of much moment as to who oc
pies the ground in question. The sole obj
of the people in making this grant to the co
pany was to obtain the objects expressed in
contract and deed of 1872, and so long as t
is obtained there can be no reversion, no mat
who owns or possesses the premises.

1st. The issue and delivery of said bonds are perpetually enjoined.

2d. Any deed from the Mayor and City Council to the land in question, without an express authority from the people of the City and County, by vote under the rules of the law permitting such transfer is perpetually enjoined."

That said Union Pacific Railway Company thereafter continued to operate the said railroad and the said bridge and its approaches until on or about the 9th day of October, 1893, when Oliver Ames, Second, and Samuel Carr, as executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff, and Edwin F. Atkins, commenced a suit against the said Union Pacific Railway Company and others, hereinafter called the "Ames Suit," in the Circuit Court of the United States for the Eighth Judicial Circuit, District of Nebraska, and filed their bill of complaint therein, and such proceedings were had in said suit that on the 13th day of October, 1893, S. H. H. Clark, Oliver W. Mink, and E. Ellery Anderson were by said court appointed receivers of all of the property of the said Railway Company, and that thereafter on the 13th day of November, 1893, John

W. Doane and Frederick R. Coudert were appointe additional receivers of said property.

That like suits were commenced, like bills c complaint filed, and like proceedings had including th appointment of said persons as receivers for the prop erty of said company, on the 13th day of October 1893, in the several Circuit Courts of the Unite States for the Southern District of New York, th District of Kansas, and the District of Colorado; an on the 15th day of October, 1893, for the District o Massachusetts; and on the 16th day of October, 1893 for the Western District of Missouri, for the Southern District of Iowa, for the District of Wyoming, for th District of Washington; and on the 17th day of Octo ber, 1893, for the District of Idaho; and on the 3r day of November, 1893, in the District Court for th Third Judicial District of Utah Territory; and th said additional receivers were likewise thereafter ap pointed in said several suits.

That thereupon and thereafter said receivers ap pointed in said Ames Suits took possession of, an operated, controlled and managed the property of th Union Pacific Railway Company, including said bridg and its approaches, under the direction of the cour until the 21st day of January, 1895, when the sam

receivers were appointed receivers in the case hereinafter described as the "Dexter Case."

That on or about the first day of November, 1865, The Union Pacific Railroad Company made, executed and delivered to Edwin D. Morgan and Oakes Ames, its first mortgage of its railway and property, to secure its first mortgage bonds. That thereafter F. Gordon Dexter and Oliver Ames, Second, were substituted as trustees of said mortgage, and that under and by virtue of said first mortgage, so-called, bonds were issued, certified, delivered, and sold to the extent of twenty-seven million, two hundred and twenty-nine thousand dollars ($27,229,000).

That on the 21st day of January, 1895, suit was brought by the said trustees against the Union Pacific Railway Company and others, including the trustees of the several bridge mortgages, as herein set forth, to foreclose the said mortgage upon the said line of railway hereinbefore described, to-wit, between Council Bluffs, the eastern terminus of said railway, and a point at or near Ogden, reference to which said cause and records and files therein, is hereby made for greater certainty; that said suit was brought in the United States Circuit Court for the said District of Nebraska, and like actions were brought in the said United States Circuit Courts in which the Ames

suit was brought, as hereinbefore specified, and in the District Court for the Third Judicial District of Utah Territory; that for convenience said suit will be designated as the "Dexter case."

That said receivers theretofore appointed in the said Ames case were appointed as the receivers in said Dexter case and thereafter continued to operate the said railroad and property until the same was sold, delivered and transferred to the defendant herein.

That thereafter such proceedings were had in the said cause of F. Gordon Dexter and Oliver Ames, Second vs. Union Pacific Railway Company and others, that on the 29th day of July, 1897, a final decree was duly entered in the said cause in the said United States Circuit Court for the District of Nebraska, and was thereafter duly entered in each and all of the courts in which the said cause was pending and in which the said Union Pacific Railway Company had property, wherein and whereby among other things it was ordered, adjudged and decreed that all of the property of the said Railway Company be sold, subject, however, to the lien of the said bridge mortgages as herein referred to, by the special Master, W. D. Cornish, at public auction, to the highest bidder or bidders, upon the mortgaged premises at the freight station of the Union Pacific

Railway Company in the city of Omaha, State of Nebraska, on a day or days to be fixed by the Special Master after due notice; that due notice was given by said Special Master, and said sale was duly made on the 2d day of November, 1897, to Louis Fitzgerald and Alvin W. Krech, as purchasing trustees, for the sum of Fifty million six hundred thirty-seven thousand and four hundred and thirty-five dollars ($50,637,435); that a report of said sale was duly made and the same was confirmed. That thereafter the said Louis Fitzgerald and Alvin W. Krech duly sold, transferred and set over to the Union Pacific Railroad Company, a corporation of the State of Utah, and the defendant herein, all their right to receive a conveyance of said railroad franchises and other property; and that on the 22d day of January, 1898, the said W. D. Cornish made, executed and delivered a deed of the said property to the said Union Pacific Railroad Company. That said foreclosure proceedings were had, the said bid of Fitzgerald and Krech was made, and the said deed made to the Union Pacific Railroad Company, the defendant herein, in pursuance of a plan and agreement of reorganization entered into between the said consolidated Union Pacific Railway Company so organized under the laws of Congress as herein set forth, and the stockholders

and the bondholders of the said Union Pacific R
way Company, and solely for the purpose of reorg
izing said Union Pacific Railway Company.

That the defendant herein was organized a
railway corporation under and by virtue of the l
of the State of Utah on or about the date of said p
of reorganization, to-wit, on or about the latter p
of the year 1897, before the making of said de
That the said Union Pacific Railroad Company
quired under said deed and proceedings the s
bridge and its approaches, subject to all the te
and conditions of the said Acts of Congress, and s
ject to all the terms and conditions under which s
donations were made by the said city of Omaha a
county of Douglas in the State of Nebraska, and
terms and conditions under which the said donati
of land were made for the purpose of aiding in
construction of the said bridge and its approach
and that the defendant and said property is n
subject to all of said conditions, limitations a
obligations.

That the said Louis Fitzgerald and Alvin
Krech, the said purchasing committee, and the s
defendant railroad company severally purchased s
railroad and said bridge and its approaches with
knowledge of all of the conditions and obligati

imposed by the said Act of Congress of 1871, under which said bridge was built and said mortgages given; and with full knowledge of all of the contracts between the Union Pacific Railroad Company, the City of Omaha, and County of Douglas in the State of Nebraska; and the conditions and covenants in said deed of Alvin Saunders of the property upon which the said bridge approaches and depot are situated; and with full knowledge of all of the proceedings in relation to the making of said mortgages upon said bridge and its approaches and took the same subject to all of said covenants and conditions, and is bound to carry out the same.

That on or about the first day of May in the year one thousand eight hundred and ninety, the said Union Pacific Railway Company, the consolidated corporation, made and entered into a contract with the Chicago, Rock Island & Pacific Railway Company, wherein and whereby the said Union Pacific Railway Company granted to the Chicago, Rock Island & Pacific Railway Company the full, equal and joint possession and use of its main and passing tracks between the terminus of such tracks in the City of Council Bluffs in the State of Iowa, and a line drawn at right angles across said tracks within one and one-half miles south from the passenger station of the said

Union Pacific Railway Company, at South Omaha in the State of Nebraska, including the bridge, union depot and tracks in Omaha, and the sidings and spur tracks as then existed or thereafter to be made, a copy of which said contract is hereto attached and marked "Complainant's Exhibit No. 4." That a similar contract as to the use of said bridge and its approaches was made with the Chicago, Milwaukee & St. Paul Railway Company, a copy of which said contract is hereto attached and marked "Complainant's Exhibit No. 5."

That thereafter the said Union Pacific Railway Company refused to carry out the terms of said contracts, and that the said Chicago, Rock Island & Pacific Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company, brought suits against the said Union Pacific Railway Company to enforce the performance of said contracts, which said suits were brought in the District Court of Douglas County, Nebraska, and removed to the United States Circuit Court for the District of Nebraska; that such proceedings were had therein that judgments were duly rendered and given compelling the said Union Pacific Railway Company to carry out the terms of said contracts, and adjudging and decreeing that the said Act of Congress, under which said bridge and its

approaches were so constructed, required the said Union Pacific Railway Company to allow the Rock Island Company and the Milwaukee Company to run their engines, cars and trains over the said bridge and tracks between Council Bluffs and South Omaha, and that the said property between Council Bluffs and South Omaha, including the said depot at Omaha, constituted the bridge and its approaches within the meaning of said Acts of Congress requiring them to allow any other railway company to run its trains over the said bridge and its approaches, reference to which said records and files is hereby made for greater certainty.

That after the acquisition of the said railway and property by said Union Pacific Railroad Company as the successor of the Union Pacific Railway Company, the Union Pacific Railroad Company, the defendant herein, continued to carry out the terms and conditions of said contracts with the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company, pursuant to the decree of said court, and that on or about the year 1899, the defendant constructed a new passenger depot upon the property so acquired by said donations from the city of Omaha, and county of Douglas in the state of Nebraska as aforesaid, and upon the

property so included within the said bridge and its approaches as defied by the Act of Congress and as construed by the said defendant railroad company and its predecessors.

That the said defendant company did on the first day of September, 1898, make, execute and deliver to the Chicago & Northwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company, a contract and agreement, a copy of which is hereto attached marked "Complainant's Exhibit No. 6," wherein and whereby it confirmed the right of the Chicago, Rock Island & Pacific Railway Company and the Chicago, Milwaukee & St. Paul Railway Company to the use of said tracks and stations, and granted to each of said companies, parties thereto, the right to use the said station grounds, tracks and facilities, on the terms and conditions therein more specifically stated, reference to which is hereby made for greater certainty. That a supplemental contract was made between said parties on or about the first day of August, 1899, a copy of which is hereto attached marked "Complainant's Exhibit 7;" that the additional grounds on which said depot and tracks are situated are shown on a map attached to said Exhibit.

That the city of Omaha is a large city, containing about 125,000 people; that the wholesale, jobbing and heavy shipping business of said city is located along and near the terminals and tracks of the Union Pacific Railroad as heretofore described, that that part of the business of said city which would most be accomodated by a new railroad is very compact, and that by reason of its said location it is impossible to procure additional terminals for a new railroad constructed into said city that will accommodate the business interests thereof; that in order to properly accommodate the business interests of said city, and the inhabitants thereof, it is necessary that the complainant make connection with, and use the said bridge and approaches of the said Union Pacific Railroad.

That South Omaha, although a separate municipal corporation, is a city exceeding 20,000 population, and is really a part of the city of Omaha; that the north line of the said South Omaha and the south line of Omaha coincide; that the streets from one municipality to the other are continuous; that the two municipalities are connected by the same street railway lines, owned and operated by the same company, and are furnished by the same water, gas and electric companies, whose mains, pipes and conduits are con-

tinuous; and that the commercial and business interests of the two cities are as intimately connected as if they were one municipal corporation.

That there are situated at South Omaha, large and extensive stock yards and packing houses, and other manufactories and industries which it is necessary for the complainant company to reach, in order to properly serve the business interests of Omaha and South Omaha, and the stock yards and packing houses and other manufactories and industries situated in the said city of South Omaha.

That there are several railroads from the west, southwest, and northwest, which terminate at South Omaha, to-wit, the Chicago, Rock Island & Pacific Railway Company, the Missouri Pacific Railway Company, and the Fremont, Elkhorn & Missouri Valley Railroad Company; that for the business interests of the cities of Omaha and South Omaha, for the interests of the complainant company and for the public generally, it is necessary that the said complainant company make connections with the said railroads so terminating in South Omaha, as well as to make connection with the Union Pacific Railroad; that from the depot of the Union Pacific Railroad Company south to South Omaha, most of the distance, the tracks of the Union Pacific Railroad Company, and the Chicago,

urlington & Quincy Railroad Company run through narrow ravine, in many places spanned by viaducts, hich said ravine and space for the location of tracks much of the distance completely filled by railroad acks already constructed by the said Union Pacific ailroad Company and the Chicago, Burlington & uincy Railway Company; that much of the distance, he said tracks are lined with large and expensive uildings, and much of the distance is thickly popu- ated; that by reason of the topography of the coun- ry and the said business buildings, residences and ther structures, it is impracticable and practically mpossible to properly connect the line of the com- lainant company ending in Council Bluffs with the aid railroads at South Omaha, and to reach the in- ustries at South Omaha, and the industries in Omaha and accomodate the business of said cities without using the said Union Pacific Bridge and its ap- proaches, including its tracks to South Omaha.

That although the Union Pacific Railroad Company did construct a line of a single track railroad from a point at the north line of Section 10 hereinbefore de- scribed southerly through the city of Omaha as it was then built prior to the passage of said Bridge Act in 1871, yet by the terms of said Act it was authorized to issue bonds and secure the same upon the said bridge

and its approaches and tracks, including depots and tracks required to perfect the same in order to make a more perfect connection between railroads that then were, or should thereafter be, constructed to the Missouri River at or near Council Bluffs, with any railroads that then were, or thereafter should be, constructed to or near Omaha, Nebraska, on the west side of the river; and in accepting the said Act of Congress, and acting thereunder, the said Union Pacific Railroad Company, its successors and assigns were, and are, bound to furnish any such railroads the use of said bridge and its approaches, and depots and tracks connected therewith, necessary to make such proper connection; that the tracks from the eastern terminus of the Union Pacific Railroad Company in Council Bluffs to a point one and one-half miles south of the depot at South Omaha are necessary to make said connections; and that the said tracks, including the yards, depots and appurtenances do constitute the said bridge and its approaches within the meaning of said Act of Congress, and as construed by the Supreme Court of the United States in the said case of the *Chicago Rock Island & Pacific Railway Company v. Union Pacific Railway Company*, and the *Chicago, Milwaukee & St. Paul Railway Company v. Union Pacific Railway Company*; and that said Union

Pacific Railway Company, and the present defendant company, so treated the said tracks as part of its bridge and approaches, and necessary for the proper connection of said railroads as aforesaid.

That heretofore, to-wit: on or about the month of December A. D. 1901, the said complainant through its General Manager, Samuel C. Stickney, who is still the General Manager of the said company, applied to the defendant company through its President, for the the right to operate its trains over and across said bridge, and to use the passenger depot of the said defendant company, and the tracks to South Omaha, and that said President then and there made a verbal proposition to the complainant that the defendant company would enter into contracts with the complainant granting and giving to the complainant company, the right to use the bridge and its approaches, including the depot of the said Union Pacific Railway Company in the city of Omaha, and the tracks to South Omaha, on the same terms as the Chicago, Rock Island & Pacific Railway Company and the Chicago, Milwaukee & St. Paul Railway Company were entitled to use the same, and that thereupon, the said Samuel C. Stickney made a pencil memorandum of said proposition to be made to the complainant herein, by the defendant; that the said President then and there stated that it would

have to be submitted to the Executive Committee o
the defendant company and that he would recommend
that the defendant company grant to the complainant
the use of said tracks and property on said terms
that on January 31, A. D., 1902, H. G. Burt, Presi-
dent of the defendant company, wrote a letter t
Samuel C. Stickney, addressing him as General
Manager of the Chicago, Great Western Railway Com-
pany, said Stickney being also General Manager of th
complainant, which said letter was as follows:

"Subject, Terminal facilities, etc.

UNION PACIFIC RAILROAD COMPANY.

Omaha, Jan. 31, 1902

Dear Sir:

Yours of the 16th inst. is received.

"I have not yet had an opportunity of taking up
in person with our people in New York the matter
referred to therein. We are, on general principles,
averse to making definite arrangements for so impor-
tant a matter, so far in advance of the construction of
your road and the necessity for the use of such ter-
minals. My suggestion is, to let the matter rest until
your road is well under way, or until you can fix a
definite time for its completion and the taking effect
of the proposed arrangement for terminals. There is

no objection, of course, to your seeing Mr. Harriman or any of our New York people about the matter, but think it will not avail much until your project is nearer consummation than at the present time.

Yours truly,

(Signed) H. G. BURT,

President."

MR. S. C. STICKNEY,

General Manager, C. G. W. Ry. Co., St. Paul, Minn.

That thereupon and on February 17, 1902, said Samuel C. Stickney wrote to said H. G. Burt as follows:

"Feb. 17, 1902.

MR. H. G. BURT,

President Union Pacific Railroad, Omaha, Neb.,

My Dear Mr. Burt:—

I have your letter of January 31st, in which you say you are averse on general principles to making definite arrangements for the use of your terminals so far in advance of the construction of our road, and you suggest to let the matter rest until our road is well under way or until we can fix a definite time for its completion and the taking effect of the proposed contract.

I hope you will kindly see that this matter is no entirely lost sight of and when the season has we opened I think we will be able to satisfy you as t the progress we are making and establish a definit time for the taking effect of the proposed contract.

Yours truly,

(Signed) SAM'L. C. STICKNEY,

General Manager."

That thereafter complainant company submitted a proposition to the defendant company, stating that it was ready and willing and desired to enter into contracts for the use of the said bridge, approaches and terminals, on the same terms as the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company, as evidenced by the contracts hereto attached, including the said contract for the use of the terminal passenger station in Omaha; and requested that the defendant company state at as early a day as possible whether it would enter into said arrangements, and allow the complainant company to use the said tracks and facilities, and then and there stated to the defendant company that the complainant company was entitled to use the said tracks and terminals under the said Act of Congress hereinbefore set forth; and

that certain officials and directors of the defendant company have from time to time promised to submit said proposition to the Executive Committee of the defendant company, and to give the complainant a definite answer to said proposition; that on or about the 28th day af October, 1902, the defendant company declined to allow the complainant company to use said tracks and facilities.

That on the 31st day of October, A. D. 1902, the complainant company made another formal demand in writing upon the said Union Pacific Railroad Company, which said demand was in the words and figures following, to-wit:

"To the Union Pacific Railroad Company:

"Please take notice that the undersigned, the Mason City & Fort Dodge Railroad Company, a railroad corporation organized and created under the laws of the state of Iowa, and being engaged in the construction of a line of railroad which will terminate at Council Bluffs, in the state of Iowa, which line of railway is now so nearly completed that it will be able to run trains thereon within a few months hereby demands to be admitted into the full, equal and joint possession and use of your main and passing tracks now located and established, or which may

hereafter be located and established, between the ter-
minus of said tracks in the city of Council Bluffs, in
the state of Iowa, to a line drawn at a right angle
across said tracks within one and one-half miles south-
erly of your passenger station at South Omaha, in
the state of Nebraska, including the bridge over which
said tracks extend across the Missouri River between
the city of Council Bluffs and Omaha; connection
with the Union depot tracks in Omaha; the side or
spur tracks leading from the main track to the lower
grade of your sidings and spur tracks in Omaha, and
such extensions as may be hereafter made; and side
tracks in Omaha on which to receive from or deliver
to said Mason City & Fort Dodge Railroad Company
freight that may be handled through the warehouses
or switched by you; the connections with the Union
Stock Yards tracks in South Omaha; and conveni-
ently located grounds in South Omaha on which said
Mason City & Fort Dodge Railroad Company may
construct, maintain and exclusively use a track or
tracks, aggregating three thousand (3,000) feet in
length, for the storage of cars and other purposes,
upon as favorable terms and conditions as you have
heretofore granted the use of said property to the
Chicago, Milwaukee & St. Paul Railway Company
and the Chicago, Rock Island & Pacific Railway Com-

pany; and the Mason City & Fort Dodge Railroad Company hereby offers to enter into a contract with the Union Pacific Railroad Company similar to the contracts made and entered into by the Chicago, Milwaukee & St. Paul Railway Company and the Chicago, Rock Island & Pacific Railway Company for the use of said property, and offers to pay the consideration therein named.

In addition, the said Mason City & Fort Dodge Railroad Company demands to be admitted into the full, equal and joint possession and use of the Union passenger station in the city of Omaha, and all the tracks and facilities connected therewith, upon the terms and conditions stated in a contract between the Union Pacific Railroad Company, the Chicago & Northwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company, bearing date September, 1898, and a supplemental contract between said parties, dated August 10, 1899, which contracts the Mason City & Fort Dodge Railroad Company hereby offers to sign and become a party to as required therein, and to pay the consideration therein named.

The Mason City & Fort Dodge Railroad Company claims that the above property constitutes the bridge

and approaches which you were authorized to co
struct under and by virtue of an Act of Congress, e
titled, "An Act to authorize the Union Pacific Rail
road Company to issue its bonds to construct a bridg
across the Missouri River at Omaha, Nebraska, an
Council Bluffs, Iowa," approved February 24th, 187
and that Act of Congress, entitled "An Act to au
thorize the construction of certain bridges and t
establish them as post roads," approved July 28th,
1866; and that under said Acts of Congress, an
under that certain contract entered into by and be
tween the Union Pacific Railroad Company, the City
of Omaha and the County of Douglas, Nebraska,
dated the first day of January, 1872, which said con
tract is contained in the body of a deed made by Alvin
Saunders, Trustee, to the Union Pacific Railroad
Company, and recorded in the office of the Register o
Deeds, in the County of Douglas, State of Nebraska,
in Book 12, on page 220, on the 2nd day of February,
1872, the Mason City & Fort Dodge Railroad Com
pany is entitled to the use thereof herein demanded.

The Mason City & Fort Dodge Railroad Company
hereby offers to pay for the use of such property a
reasonable consideration as provided in said Acts o
Congress and in the contract between the Union

Pacific Railroad Company, the city of Omaha and the county of Douglas, Nebraska, aforesaid.

MASON CITY & FORT DODGE RAILROAD COMPANY,

By JAMES W. COLT,

President."

HOMER S. PAGE,

Secretary."

That an original of the same, duly signed by the president and the secretary of the complainant complainant company was duly served upon the defendant company on the said day, and that the defendant has refused and neglected to comply with the same.

That under the terms of said contracts, Exhibits (6) and (7) hereto attached, for the use of said station in Omaha, it was agreed among other things that the following named companies should be admitted to the joint use of said depot and appurtenances in case they, or either of them, should so desire, and should become a party to the said agreement by subscribing to a copy of the same, which should be in the possession of each of the parties to said agreement; that the companies therein named were the Missouri Pacific Railway Company, Fremont, Elkhorn & Missouri Valley Railroad Company, Chicago, St. Paul, Minneapolis & Omaha Railway Company, Illinois Central Railroad Company, The Wabash Railroad Company,

and the Omaha & St. Louis Railroad Company; th
the said companies have signed said agreement, a
have been admitted to the joint use of said passeng
station under the terms thereof. It was therein pr
vided that any other railroad companies by and wi
the consent of the Union Pacific Railroad Company
the party of the first part, and upon like subscriptio
to the copy of the said agreement in the possession o
the original parties thereto, should be admitted t
said depot; that the complainant hereby offers to sig
said agreement, become a party thereto, pay the con
siderations therein named, and become bound by al
the terms and conditions thereof, and alleges that i
is entitled to such use.

Complainant is also willing to enter into like agre
ments, like in form, in relation to the said bridge and
its approaches, as those entered into between th
Union Pacific Railway Company, the predecessor o
this defendant, and the Chicago, Rock Island &
Pacific Railway Company and the Chicago, Milwauke
& St. Paul Railway Company, and which contracts
are now in force, to pay the considerations therein
named, and to enjoy the joint use of said tracks and
said bridge and its approaches on equal terms with
said companies. The compensation provided for in
the said contracts between the said Chicago, Rock

and & Pacific Railway Company and the Chicago, lwaukee & St. Paul Railway Company, is a reason- e compensation for the use of said bridge and its proaches; and the compensation provided for in the d contract between the said railway companies and said Union Pacific Railroad Company for the use said passenger station, and tracks connected there- h, is a reasonable compensation.

That heretofore, to-wit, during the spring of 92, the complainant company requested of the fendant company that it furnish to the complainant nap showing a proper and convenient connection to made with the tracks of the Union Pacific Railroad mpany in Council Bluffs in order to admit the nplainant to the joint use of the bridge, its proaches and tracks; that the defendant company rnished to the complainant company a map showing onnection satisfactory to the defendant company, ich said map complainant asks leave to produce at y hearing of this cause and introduce in evidence thout attaching the same to this bill; that said nnection is a proper and convenient connection, th for the Union Pacific Railroad Company and for e complainant; that complainant desires to make d connection at said place, and is willing to bear of the expense of installing the same, and of

maintaining and operating the same, and all of the expenses of installing a proper interlocking plant including the switches, and other necessary appliances connected therewith, and of maintaining and operating the same.

Plaintiff alleges on information and belief that if it undertook to make said connection without the consent of the defendant company, said defendant company would by force prevent the said connection, and would prevent complainant from using said tracks and property, as it is entitled to do under said Act of Congress and other contracts and agreements herein set forth, and for which complainant has no adequate remedy at law; that if the complainant is not allowed to connect its railroad with the said tracks of the Union Pacific Railroad Company, and use its said bridge and approaches, depot and tracks as herein set forth, complainant will be damaged in a large sum of money, the amount whereof it is unable to state; that the amount involved in this cause exceeds the sum and amount of Two Thousand Dollars ($2,000) exclusive of interest and costs; and that this suit is one arising under the laws of the United States.

For inasmuch, therefore, as the complainant has no adequate remedy at law, it prays the decree of this

That heretofore, to-wit, on the 7th day of Janu-
A. D., 1903, the Board of Directors of the Mason
& Fort Dodge Railroad Company, the complain-
herein, duly passed a resolution accepting the
s and provisions of the act of the legislature of
State of Nebraska, entitled "An Act to enable
ign corporations to become domestic corporations
his state," approved March 19, 1889; and for the
pose of enabling it to become a domestic corpora-
of the State of Nebraska, the Mason City & Fort
ge Railroad Company did by said resolution direct
t a true copy of its charter and articles of associa-
, together with a certified copy of the said resolu-
, be filed and recorded with the Secretary of State
he State of Nebraska. That thereafter, and on
13th day of January, A. D., 1903, a certified copy
said resolution of the Board of Directors of the
son City & Fort Dodge Railroad Company, together
h a certified copy of its Articles of Incorporation,
re duly filed with the Secretary of State of the
te of Nebraska, and duly recorded as provided by
w; and in all things the said Railroad Company has
mplied with the laws of the State of Nebraska.

PAGE CUT OFF

Court, adjudging and decreeing that the complainant, its successors, lessees and assigns, is entitled to and be admitted into the full, equal and joint use with the other railroad companies of the main and passing tracks of the Union Pacific Railroad Company now located and established, or which may be hereafter located and established, between the eastern terminus of the said tracks in the City of Council Bluffs, in the State of Iowa, and a line drawn at right angles across said tracks within one and one-half miles southerly of the passenger station of the Union Pacific Railroad Company at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri river between the cities of Council Bluffs and Omaha, the side or spur tracks leading from the main track to the lower grade of the sidings and spur tracks of the Union Pacific Railroad Company in Omaha, and such extensions as may be hereafter made, and side tracks in Omaha on which to receive from or deliver to said Mason City & Fort Dodge Railroad Company freight that may be handled from the warehouses, or may be switched by the Union Pacific Railroad Company; also connection with the Union Stock Yards tracks in South Omaha, and conveniently located ground in South Omaha on which said Mason City & Fort Dodge Railroad Company may

construct, maintain and exclusively use the track aggregating in length three thousand (3,000) feet, f the storage of cars and other purposes, upon as favo able terms and conditions as have heretofore be granted to the other railroad companies, and decre ing that said complainant its successors, lessees a assigns, also be admitted into the full, equal a joint use of the passenger station in the City Omaha, and of the tracks and facilities connect therewith, upon the terms and conditions stated in contract between the Union Pacific Railroad Compa and the Chicago & Northwestern Railway Compan the Chicago, Rock Island & Pacific Railway Compan and the Chicago, Milwaukee & St. Paul Railway Co pany, bearing date September——, 1898, and a suppl mental contract between the said parties dated Augu 1, 1899, upon the said Mason City & Fort Dodge Ra road Company, signing the said agreement, which hereby offers to do; that the said Union Pacific Ra road Company, its successors and assigns, and officers, agents and servants be enjoined and restrain from preventing complainant, its successors, lesse and assigns, having the use and enjoyment of sa property and facilities, and enjoined from preventi the complainant company from making connecti with the tracks of the Union Pacific Railroad Co

pany in Council Bluffs and South Omaha; and that the Court issue its mandatory order and injunction compelling the said Union Pacific Railroad Company to grant unto the said complainant company, the said rights and privileges; and that pending the hearing of this cause the Court grant a temporary order to the same effect; and that complainant have such other and further relief not herein specifically prayed for as seems necessary to do justice and equity between the parties.

And your orator further prays, that Your Honors grant to it not only the writ of injunction issuing out of the Court and directed to the said defendant, Union Pacific Railroad Company, enjoining and restraining it as hereinbefore prayed, but also a writ of subpoena issuing in like manner, directed to the said defendant, commanding it at a certain day, and under a certain penalty to be therein named, to personally be and appear before this Honorable Court, then and there to answer all and singular the matters aforesaid, but not under oath (answer under oath being hereby expressly waived), and to stand and perform and abide

such direction and decree as shall be made herein and as to Your Honors may seem equitable and just.

And your orator will ever pray.

MASON CITY AND FORT DODGE RAILROAD COMPANY.

By JAMES W. COLT,
*President.*

FRANK B. KELLOGG,
JAMES M. WOOLWORTH,
WILLIAM D. McHUGH,
*Solicitors.*

FRANK B. KELLOGG,
JAMES M. WOOLWORTH,
*of Counsel.*

ATE OF IOWA,
UNTY OF WEBSTER. } ss.

James W. Colt being duly sworn says that he is
e President of the Mason City & Fort Dodge Rail-
ad Company, the complainant in the above entitled
tion; that he has heard the foregoing complaint
ad and knows the contents thereof, and that the
me is true.

JAMES W. COLT.

Subscribed and sworn to before me this 1st day
November, A. D. 1902.

ROBERT HEALEY,

(SEAL) *Notary Public, Webster County, Iowa.*

**Complainant's Exhibit No. 1.**

## OMAHA BRIDGE MORTGAGE.

### Union Pacific Railroad Company.

This indenture made this first day of April, A. D. 1871, by and between the Union Pacific Railroad Company (hereinafter called "the Company") of the one part, and John Edgard Thompson of Philadelphia, John Pierpont Morgan of New York, and Elisha Atkins of Boston, of the other part.

Whereas, By an act of congress of the United States, approved 22nd day of February, 1871, the company is authorized to construct a bridge and railroad line across the River Missouri, between Omaha in the State of Nebraska and Council Bluffs in the State of Iowa, and to issue such bonds, not exceeding two millions and a half of dollars, as it might deem needful for that purpose, and to secure the same by mortgage on the bridge and its approaches and appurtenances.

And whereas, The Company, for the purpose of purchasing and acquiring the lands and materials necessary for the construction of the said bridge and its approaches, and connecting lines and for con-

tructing the same, has determined to obtain a loan of money by the issue of special bridge bonds for the total sum of two millions and a half of dollars United States gold coin, or five hundred thousand pounds British sterling money in two thousand five hundred bonds numbered 1 to 2500 inclusive, for the sum of one thousand dollars United States gold coin, or two hundred pounds British sterling money each, the principal of which is payable on the first day of April, 1896, unless sooner redeemed under the sinking fund clause hereinafter contained, payable at the option of the holder at the office of Messrs. Dabney, Morgan & Company, or their satisfactory successors, of New York, or at the London and San Francisco Bank (Limited), London, with interest in the meantime from the first day of April, 1871, on the said principal sum, at the rate of eight per cent. per annum, payably by half yearly iustallments of forty dollars United States gold coin, or of eight pounds five shillings and nine pence British sterling money each, on the first day of October and the first day of April, in each year, free of all taxes on said bonds in the United States, the said interest to be payable at the option of the holder, in United States gold coin, at the office of Messrs. Dabney, Morgan & Co., or their satisfactory successors, New York, or in British

sterling money, at the office of the said London and San Francisco Bank (Limited) in London, upon presentation of the coupons attached to the bonds with provisions for the principal of the said bonds becoming due immediately upon default of paying the interest thereon, or upon default in the provision of the fund for payment of interest, and sinking fund as hereinafter provided.

And, Whereas, It has been agreed upon the issue of the said bonds, that the payment of the principal and interest thereof, shall be secured in manner hereinafter expressed, and that the covenants and mortgage hereinafter contained should for that purpose be made to the said John Edgar Thompson, John Pierpont Morgan and Elisha Atkins (hereinafter called "the trustees"), for the benefit of and in trust for the various persons who have consented, or shall hereafter consent, to purchase and take the said bonds, and all other persons who shall at any time hereafter be or become holders of the said bonds; and also, so far as necessary, for the benefit of and in trust for any persons or corporation who shall become purchasers of the said bridge, under the powers hereinafter contained.

And, Whereas, The said bonds are identified as being entitled to the benefit of the security hereby

given by a certificate upon each of them signed by the trustees;

Now This Indenture Witnesseth, that the company doth hereby covenant and agree with and to the trustees in manner following, that is to say:

Art. 1. The survivor or survivors of the trustees, or other persons or person, who shall, under the powers hereinafter contained, be for the time being the trustees or trustee of these presents (all which persons collectively are hereafter called "the trustees") for the time being, if the said company should at any time fail to provide the said trustee with all the moneys required to meet matured interest, sinking fund payments, and all other obligations arising under the terms and conditions of this indenture, shall, so long as any of the said bonds shall be outstanding or unpaid, have the right to fix the tolls to be levied upon all property and passengers to be transported over, or which shall use or have the benefit of the said bridge or the depots connected therewith at Council Bluffs or Omaha, or the lines of track required to connect the said bridge with the railways having their terminus at Omaha and Council Bluffs; and the rates so fixed may be changed from time to time by the trustees for the time being, so as to produce from time to time a sufficient revenue to

maintain the said bridge and lines in good order and repair, and to pay the interest on the said bonds, and to provide in each year a sinking fund, to consist of the fixed sum of forty-two thousand dollars United States gold coin, and of a sum equal to the interest upon all bonds previously purchased or redeemed by the operation of the sinking fund in previous years; which sinking fund in each year is to be applied for the purchase or redemption of so many of the said bonds as it will purchase under the provisions hereinafter contained, provided the holders elect to sell the same.

Art. 2. The said tolls shall be levied and collected by the Company upon all property and passengers transported over or using the said bridge, depots, or lines, and shall constitute a first transportation lien upon all such property, and shall be first deducted and retained from the gross sums received from transportation of such property and passengers, and shall be especially set apart, and the amount thereof received, deducted and retained in each calendar month; and shall, within fourteen days after the end of each calendar month, be paid to the credit of the trustees for the time being, at such banking house at New York, as they shall from time to time designate; and said money shall be kept by said trustees at cur-

ent deposit interest, for the benefit of the company; nd out of the moneys so raised and paid, and the nterest that may accrue thereon, the trustees for the ime being shall in each year deduct and retain such sums as shall be necessary to pay and provide the interest for the current year on the said bonds and the said further sum of forty-two thousand dollars, gold coin and a sum equal to the interest upon the bonds, previously redeemed or purchased under the provisions hereinafter contained; and the two last mentioned items shall constitute the said sinking fund, which is to be applied in each year by annual drawing for the purchase and redemption of the said bonds thus drawn with a premium of ten per cent. thereon, if the holders thereof elect to sell the same in the manner hereinafter provided; and out of the said moneys so received by them, the trustees for the time being shall pay the interest on the unredeemed bonds and the principle and premium of the bonds thus to be redeemed or purchased, if any, and the remainder, if any, of the tolls received by the said trustees in each year shall be paid by them to the Company.

Art. 3. The bonds to be redeemed in each year shall be drawn by lot by the trustees for the time being, or some or one of them, or by some person duly authorized by them, in the month of November in

each year, beginning in the month of November 1871, at the office of Dabney, Morgan & Co., or their satisfactory successors, New York, in the presence of one of the members of that firm, and of a Notary Public, and notice of the numbers so drawn shall be posted by the trustees for the time being at the offices where coupons are paid in New York and London, and shall be also advertised by them in one or more newspapers in each of the cities of London and New York, on or before the first day of February after the drawing; and on the first day of April, following the drawing, the bonds so drawn shall be paid by the trustees for the time being to such of the holders thereof as may have in writing notified the trustees on or before that day, of their election to have their said bonds so redeemed or paid, together with a premium of ten per cent. on the nominal value thereof; that is to say, at the rate of two hundred and twenty pounds British sterling money, or one thousand one hundred dollars United States gold coin, for each bond; such payment to be made at the option of the holders of the bonds, at the offices of the London and San Francisco Bank (limited) in London, or Messrs. Dabney, Morgan & Co., or their satisfactory successors, of New York, on delivery up of the bond with the unmatured coupons; and in case any of the holders of the bonds

thus drawn shall fail to notify the trustees in writing as aforesaid of their election to have their said bonds thus paid and redeemed with the premium aforesaid, then and forever thereafter such bonds shall cease to be entitled to be purchased and redeemed by means of said sinking fund as aforesaid, and said sinking fund shall be proportionately reduced. In case the tolls paid over by the company to the trustees for the time being shall not be sufficient to enable the said trustees to make the payments which they are hereinbefore authorized to make, the company will from time to time pay to the trustees for the time being such sums of money as shall be required to make up the deficiency as and when required to make the payments.

Art. 4. All moneys to be raised by the issue of the said bonds shall in the first instance be received by the trustees, who shall retain in their hands, from time to time, such amount as shall in their judgment be sufficient to secure the entire construction and completion of the said bridge, and of the connecting lines and approaches thereof, and the payment and provision of the interest and sinking fund upon the said bonds during such construction.

Art. 5. For the better securing the payment of the principal and interest of the said bonds, and in

consideration of the premises and of the sum of one dollar, lawful money of the United States, to the company in hand paid by the trustees, the receipt whereof is hereby acknowledged, the company hath granted, bargained, sold, assigned, transferred, set over, enfeoffed, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, transfer, set over, enfeoff, convey and confirm unto the said John Edgar Thompson, John Pierpont Morgan and Elisha Atkins, trustees as aforesaid, and to their heirs and successors and the survivors and the survivor of them and the heirs of such survivor, all and singular, the said bridge over the River Missouri, between Omaha and Council Bluffs, and the approaches thereof, and the appurtenances belonging thereto, including all parts and portions of the said bridge now constructed or hereafter to be constructed, and the depots at Council Bluffs and Omaha as aforesaid, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the neighboring lines included in this conveyance as well the lines and tracks now constructed as those which may hereafter be constructed, and also all estates, terms and rights of way of the said bridge, approaches and appurtenances, as well now held by the company, as to be hereafter ac-

ired by it, and all the rights and privileges of the id company of, in or to the said bridge, approaches appurtenances, or touching, concerning, or apperining to the maintenance, use and occupation hereof. To have and to hold all the said premises nto the said John Edgar Thompson, John Pierpont Morgan and Elisha Atkins, as such trustees as aforesaid, and to their heirs and successors, and the survivor and survivors of them, and to the heirs of such survivor: Upon trust to hold the same to and for the uses and purposes and upon and with the conditions and powers in and by these presents expressed and declared.

Art. 6. So long as the security hereby created shall subsist, the company will insure the depots and buildings connected with the said bridge to the full value thereof, with some insurance office or offices, to be approved by the trustees for the time being, against loss or damage by fire, and will deposit with such trustees the policies of insurance, and produce to them the receipts for payment of premiums so soon as they shall become due; in default whereof the trustees for the time being may insure the said depots and buildings, and the company will forthwith repay them the cost thereof, or the said trustees may retain

the same out of any moneys which shall come to th
hands by virtue of these presents.

Art. 7. If the company shall fail to levy
collect the tolls to be fixed as aforesaid upon
property and passengers transported over, or hav
the benefit or use of the said bridge, depots or li
or to deposit and apply the said tolls in manner h
inbefore provided; or if the tolls collected and p
over by the company shall prove insufficient to m
the payments aforesaid, to be made thereout by
trustees for the time being, for interest and rede
tion of the bonds at the time and manner herei
fore provided, and the company shall fail in due t
to pay the deficiency to such trustees, or if the c
pany shall fail to keep any other of its coven
herein contained, then and in such case it shal
lawful for the trustees for the time being, and i
hereby made their duty to enter into the direct
session and receipt of the said tolls, and for that p
pose to appoint suitable agencies for collection of
said tolls independently of the company, and th
out to defray the expenses attending the maintena
working and managing of the said bridge and li
and out of the surplus, so far as it will extend
pay the interest and provide the sinking fund u
the said bonds, and generally to apply such sur

n the same manner as is hereby provided in the case f the tolls having been levied by the Company and aid over to the trustees for the time being.

Art. 8. If any such default shall be committed y the Company, as in the preceding article men- ioned, the trustees for the time being shall be author- zed, and are hereby required, upon the request of the holders of one-tenth of such part of the said bonds as shall then be unpaid with or without entry, as they may deem best, to cause the said bridge and lines, and all other property, matters and things hereinbe- fore expressed, to be conveyed, to be sold by public auction in the City of New York, giving ninety days notice of the time, place and terms of sale, once in each week, in one or more papers published in Lon- don or New York; and upon such sale to execute to the purchaser or purchasers deeds, releases, transfers and conveyances of the property, estate, rights and securities thus sold, and to apply the proceeds of such sale, together with all moneys in their hands which shall be received under or by virtue of these presents, after deducting all expenses incurred in the execution of the trusts or powers hereby created *pro rata* in payment of the principal and interest of the said bonds then unpaid, whether the same shall have be-

come due or not, and shall pay over the surplus, if any, to the company.

Art. 9. No purchaser on any such sale shall be bound to inquire whether such notices as are mentioned in the preceding article have been given or be affected by any notice that they have not been given, but the conveyance by the trustees to the purchaser shall, notwithstanding the want of such notices, be an effectual discharge to the purchaser (who shall not be bound to see to the application of the purchase moneys), and an effectual conveyance to him.

Art. 10. If such sale shall be made as is provided in Art. 8, the company shall thereafter, in perpetuity, be bound to pass over the said bridge and lines, and no part thereof over any bridge or ferry across the Missouri now or hereafter existing, within twenty miles in a straight line above or below the said bridge hereinbefore mentioned, all the passengers and freight of the company passing across the Missouri, and will pay, as a first transportation lien upon such traffic, such tolls as shall from time to time be lawfully charged by the purchasers of the said bridge and lines in respect of goods and passengers passing over or using the same.

Art. 11. Notwithstanding any such sale, the company shall remain bound to pay to all the bond-

lders so much of the principal and interest of their nds, if any, as shall not have been paid out of the roceeds of such sale.

Art. 12. Upon payment by the Company, without any such sale as is mentioned in Art. 8, of the rincipal and interest of the said bonds, at the times nd in the manner aforesaid, the transfer, conveyance and assignment hereby made of the said bridge ith its appurtenances, and other the premises hereinbefore expressed, to be conveyed, shall be void; and ll the estate, right and property conveyed to the trustees shall revert to and revest in the company, without any acknowledgement of satisfaction, or re-conveyance, re-entry, or any act whatever.

Art. 13. If any of the trustees for the time being shall die or resign, the vacancy shall be filled by a successor from among the persons holding bonds of the said issue to an amount not less than five thousand dollars, such appointment to be made in writing by the remaining trustee or trustees for the time being and the board of directors of the company, or in case said board of directors shall fail, after notice in writing from said trustees, to make such joint appointment within three calendar months after the vacancy shall occur, the appointment shall be made by any Court of equity having jurisdiction in the premises;

and upon any such appointment all necessary conveyances and assurances shall be made to vest in the new trustees, jointly with the remaining trustees, the property hereby mortgaged, and all the rights and powers hereby created.

Art. 14. Notwithstanding any such vacancy the remaining trustee or trustees may discharge all the duties and powers hereby given to the trustees for the time being as effectually as if the full number of trustees had been filled up; and all the covenants herein contained are to be deemed and made with the trustees hereby appointed or the survivor or survivors of them and their successors in the said trust.

Art. 15. The said trustees hereby appointed severally accept the said trust, but they are not, nor are the trustees for the time being to be answerable, except for willful default or gross negligence in the execution of the said trust, and neither of the said trustees for the time being is to be answerable for the doings and omissions of any other of such trustees, unless consented to by him.

Art. 16. The company will pay to the trustees for the time being a reasonable compensation for the discharge of their duties, and also all or any expenditure or costs incurred therein, or the trustees for the time being may retain the same out of any moneys

ich shall come to their hands by virtue of these esents.

In witness whereof the company hath affixed its mmon seal to these presents and caused the same to signed by its president and secretary, in pursuance a resolution of its board of directors, and the other rties have hereunto set their hands and seals the y and year first above written.

(Seal of Union Pacific R. R. Co.)

Thomas A. Scott,

Pres. Union Pacific R. R. Co.

Union Pacific Railroad Company,

R. $2,500. By E. H. Rollins, Secretary.

J. Edgar Thompson,

Elisha Atkins,

[L. S.] Trustees.

Executed in the presence of John A. Hillary as o Thos. A. Scott.

Witness to signature of E. H. Rollins, Sec'y., H. B. Wilbur.

Witness to J. E. Thompson, John P. Greer.

Witness to Elisha Atkins, H. B. Wilbur.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.

Be it remembered that on this 28th day of September, in the year of our Lord, one thousand eight hundred and seventy-one, before me, the undersigned, Jacob DuBois, a Commissioner resident in the City of New York, duly commissioned and qualified by the Executive authority, and under the laws of the State of Nebraska, to take the acknowledgement of deeds, etc., to be used or recorded therein, personally appeared Thomas A. Scott, President of the Union Pacific Railroad Company, to me personally known to be the identical person whose name is affixed to the foregoing indenture, as president of the said company, the grantors in said indenture named, who, being by me duly sworn, did depose and say that he is the president of the Union Pacific Railroad Company, that he knows the corporate seal of the said company, that the seal affixed to the foregoing indenture is such corporate seal, that it was so affixed by order of the board of directors of said company, and that he signed his name thereto by the like order as president of said company, and the said Thomas A. Scott acknowledged the said instrument so subscribed to be his voluntary act and deed as such president as aforesaid.

In testimony whereof I have hereunto set my nd and affixed my official seal the day and year st above mentioned.

JACOB DUBOIS, (L. S.)
Commissioner for the State of Nebraska
in New York City.

TATE OF MASSACHUSETTS,
OUNTY OF SUFFOLK, CITY OF BOSTON, } ss.

On this 27th day of September, A.D. 1871, before e the subscriber, a commissioner in and for the state foresaid, duly commissioned and authorized by the lovernor of the State of Iowa to take the acknowedgment and proof of deeds and other instruments in riting to be used or recorded in said state of Iowa, nd to administer oaths and affirmations, personally ppeared E. H. Rollins, Secretary of the Union Pacific Railroad Company, to me personally known to e the identical person whose name is affixed to the foregoing instrument as Secretary of the said company, the grantors in said indenture named, who, eing by me duly sworn, did depose and say that he s the secretary of the Union Pacific Railroad Company, that he knows the corporate seal of said company, that the seal affixed to the foregoing indenture is such corporate seal, that it was so affixed by order

of the board of directors of said company, and that he signed his name thereto by the like order as secretary of said company, and the said E. H. Rollins acknowledged the said instrument so subscribed to be his voluntary act and deed as such secretary aforesaid.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

A. W. ADAMS, (L. S.)
Commissioner for the State of Iowa.

STATE OF MASSACHUSETTS,
COUNTY OF SUFFOLK, CITY OF BOSTON, } ss.

On the 27th day of September, A. D. 1871, before the subscriber, a Notary Public duly commissioned and sworn in and for the county of Suffolk and practicing in the City of Boston, personally appeared E. H. Rollins, secretary of the Union Pacific Railroad Company, to me personally known to be the identical person whose name is affixed to the foregoing indenture as secretary of the said company, the grantor in said indenture named, who being by me duly sworn did depose and say that he is the secretary of the Union Pacific Railroad Company, that he knows the corporate seal of the said company, that

he seal affixed to the foregoing indenture is such cor-
orate seal, that it was so affixed by order of the
oard of directors of said company, and that he
gned his name thereto by the like order, and the
aid E. H. Rollins acknowledged the said instrument
o subscribed to be his voluntary act and deed as such
ecretary aforesaid.

In testimony whereof I have hereunto set my
and and affixed my notarial seal the day and year
irst above written.

A. W. Adams,
Notary Public. (L.S.)

Commonwealth of Massachusetts, } ss.
Suffolk.

Superior Court.

I hereby certify that A. W. Adams was at the date of the within attestation a Notary Public within and for said county duly commissioned and sworn, that due faith and credit are and ought to be given to his official acts, and that he is duly authorized to administer oaths and take acknowledgments, and that his signature is genuine.

Witness my hand and the seal of said court in

Boston in said county and commonwealth this 27th day of September, A. D. 1871.

(I. R. 5c) Jos. A. WILLARD, Clerk.

Recorded October 3d, A. D. 1871, at 12 o'clock, M.

THOS. SWOBE,
County Clerk.

**Complainant's Exhibit No. 2.**

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## AGREEMENT.

ION PACIFIC RAILROAD COMPANY,
TO
N EDGAR THOMSON, ET AL.

THIS AGREEMENT made the twenty-seventh day of ptember, eighteen hundred and seventy-one, by and tween the Union Pacific Railroad Company (hereafter called "the Company"), of the one part, and hn Edgar Thomson of Philadelphia, John Pierpont organ of New York, and Elisha Atkins of Boston ereinafter called "the Trustees"), trustees under a rtain indenture of conveyance and mortgage exeted by and between said Company, and said Thomn, Morgan & Atkins as Trustees, bearing date the rst day of April, 1871, whereby said Company hath ortgaged its certain bridge and approaches and apurtenances over the river Missouri to secure the payent of its certain bonds and obligations therein menioned of the other part WITNESSETH:

That the said Company and the said trustees, for nd in consideration of one dollar to each of them by he other in hand paid, do hereby mutually covenant, grant, promise and agree to and with each other, that

the notice required to be given by the holders of t
bonds drawn in accordance with the terms and pr
visions of article three of said indenture, of their el
tion to have their bonds redeemed and paid, may, wi
the consent of the bondholders given as hereinaft
provided, be given to and accepted by the said tr
tees at any time before the drawing thereof, and th
such notice may be given and accepted in the mann
hereinafter provided.

That the interest on the bonds, drawn in acco
ance with the terms and provisions of article three
said indenture, and as to which notice shall have be
given as above provided, shall cease after the first d
of April following the day on which they are draw

That all the bonds secured by said indenture sh
bear interest at the rate of two-fifths of one per ce
per annum, in addition to the annual eight per ce
interest provided for in the said indenture, which s
interest of two-fifths of one per cent. shall be paid
a gross sum of ten per cent. upon the nominal amou
of the bond at the time when the principal of
bond becomes payable under the terms or conditi
of said indenture, excepting always that those bo
which are drawn and redeemed at ten per cent. p
mium before maturity by the sinking fund, shall
carry the said interest of two-fifths of one per ce

and the trustees are hereby authorized and empowered to retain and deduct and to pay and discharge such installment of interest out of any funds or moneys of the Company in their hands.

That the London and San Francisco Bank (limited) of London is hereby authorized, on the written authority of any bondholder under seal, to be filed with the trustees or either of them, to endorse or to cause to be endorsed, by printing or otherwise, upon his bond, that notice has been given to and accepted by the trustees, that the holder of such bond elects to have the same redeemed by the sinking fund when drawn; that such bond, if drawn for the sinking fund, ceases to draw interest from April 1st, next, following; and that the last holder thereof will be entitled to a final installment of interest on such bond at the rate of ten per cent. on the nominal amount thereof, upon the principal becoming due under the terms or conditions of the mortgage, unless the same be redeemed before maturity by the sinking fund.

In witness whereof the said Company hath cau
these presents to be signed, sealed and delivered t
day and year first above written.

(Seal of the Union Pacific Railroad Co.)

Thomas A. Scott,

Pres. Union Pacific Railroad Company.

Union Pacific Railroad Company,

By E H. Rollins, Secretary.

Sealed and delivered in the presence of Charle
Edward Tracy.

U. S. Revenue Stamp 10c cancelled.

State of Massachusetts,
County of Suffolk,
City of Boston. } ss.

On this twenty-seventh day of September, A. D
eighteen hundred and seventy-one, before me the sub
scriber a commissioner in and for the state aforesaid
duly commissioned and authorized by the Governor o
the State of Iowa to take the acknowledgments an
proofs of deeds and other instruments of writing to b
used or recorded in the said State of Iowa and to ad
minister oaths and affirmations, &c., personally ap
peared E. H. Rollins, Secretary of the Union Pacif
Railroad Co., to me personally known to be the iden
tical person whose name is affixed to the within inde

ure as Secretary of the said Company, the grantors in said indenture named, being by me duly sworn did depose and say that he is Secretary of the Union Pacific Railroad Company, that he knows the corporate seal of said Company, that the seal affixed to the within indenture is such corporate seal, that it was so affixed by order of said corporation and that he signed his name thereto by the like order as Secretary of said Company, and the said E. H. Rollins acknowledged the said instrument so subscribed to be his voluntary act and deed as Secretary as aforesaid.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

A. W. ADAMS,
Commissioner for the State of Iowa

STATE OF MASSACHUSETTS,
COUNTY OF SUFFOLK,
CITY OF BOSTON. } ss.

On this twenty-seventh day of September, A. D. Eighteen hundred and seventy-one, before me the subscriber, a Notary Public duly commissioned and sworn in and for the County of Suffolk and practicing in the City of Boston, personally appeared E. H. Rollins, Secretary of the Union Pacific Railroad Co., to me personally known to be the identical person whose

name is affixed to the within indenture as Secreta
of the said Company, the grantors in said indent
named, being by me duly sworn, did depose and s
that he is Secretary of the Union Pacific Railro
Company, that he knows the corporate seal of the s
Company, that the seal affixed to the within inde
ture is such corporate seal, that it was so affixed
order of said corporation, and that he signed
name thereto by the like order as Secretary of s
Company, and the said E. H. Rollins acknowledg
the said instrument so subscribed to be his volunt
act and deed as Secretary as aforesaid.

In testimony whereof I have hereunto set
hand and affixed my notarial seal the day and year fi
above written.

(SEAL.) A. W. ADAMS,
Notary Public.

(Rev. Stamp 5c cancelled.)

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, ss., SUPERIOR COURT.

I hereby certify that A. W. Adams was at
date of the within attestation a Notary Public wit
and for said County duly commissioned and swo
that due faith and credit are and ought to be gi
to his official acts, that he is duly authorized to

minister oaths and take acknowledgments, and that his signature is genuine.

Witness my hand and the Notarial Seal of said Court at Boston, in said County and Commonwealth this 27th day of September, A. D. Eighteen hundred and seventy-one. JOSEPH A. WILLARD,
Clerk.

(SEAL.) (Rev. Stamp 5c.)

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.

Be it remembered that *that* on the twenty-eighth day of September, A. D. eighteen hundred and seventy-one, before me, the undersigned, a commissioner resident in the city of New York, duly commissioned and authorized by the Governor of the State of Iowa to take acknowledgment and proof of deeds and other instruments of writing to be used or recorded in the said State of Iowa, and to adminster oaths and affirmations, etc., personally appeared Thos. A. Scott, President of the Union Pacific Railroad Company, to me personally known to be the identical person whose name is affixed to the within indenture as President of the said company, the grantors in said indenture named, who, being by me duly sworn, did depose and say that he is President of the Union Pacific

Railroad Company, that he knew the corporate seal of the said company, that the seal affixed to such indenture is the corporate seal, that it was affixed by order of the said corporation, and that he signed his name thereto by the like order as President of said company. And the said Thomas A. Scott acknowledged the said instrument so subscribed to be his voluntary act and deed as such President as aforesaid.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year above written.

JOHN A. HILLERY,
(SEAL.) Commissioner for the State of Iowa,
50 Wall St., N. Y.

**Complainant's Exhibit No. 3.**

## RENEWAL MORTGAGE OMAHA BRIDGE.

THE UNION PACIFIC RAILWAY COMPANY.

THIS INDENTURE, made this first day of October, . D. 1885, between the Union Pacific Railway Com- any, hereinafter called the "Railway Company," arty of the first part, and the Central Trust Com- an of New York, hereinafter called the "Trustee," arty of the second part, Witnesseth:

WHEREAS, By an Act of Congress, approved Feb. 4th, 1871, the Union Pacific Railroad Company, of hich the party of the first part is the successor by onsolidation, duly authorized and made, was author- ed to construct a bridge and railroad line across the Missouri River between Omaha, Nebraska, and Coun- il Bluffs, Iowa, and to issue bonds not exceeding two nd one-half million dollars, as said company might leem needful for that purpose, and secure the same y mortgage on the bridge, its approaches and appur- enances; and

WHEREAS, Under such authority, the Union Pa- ific Railroad Company heretofore issued bonds to the mount of $2,500,000; and secured the same by a

mortgage on the said bridge, its approaches and appurtenances, dated the first day of April, 1871, and a supplemental mortgage, dated the twenty-seventh day of September, 1871, which mortgages have been duly recorded and are hereby referred to for greater certainty; and

WHEREAS, Under the operation of the sinking fund provisions contained in said mortgages, the bonds secured thereby have, from year to year, commencing with the years 1871-72 down to and including the year 1884-85, been redeemed, to the amount of $879,000; and

WHEREAS, At the date of this indenture, the balance of the principal sum of said mortgage amounts to $1,621,000, and is unpaid, as well as the interest to accrue thereon; and

WHEREAS, The said railway company as such successor of the said Union Pacific Railroad Company is authorized by Act of Congress to fund and renew said debt now remaining unpaid, secured by said existing bridge mortgages, to an amount not exceeding $2,500,000, and to execute a mortgage to secure the same; and

WHEREAS, The said railway company has resolved, for the purpose aforesaid, that it will issue such number of new five per cent. bonds of one thou-

and dollars each, not exceeding twelve hundred and fty of such bonds, as may be necessary to fund and enew the principal due, and to become due, under he said mortgages; including sinking fund require-nents, and will execute a mortgage on the said ridge, approaches, appurtenances and earnings to he party of the party of the second part hereto, which said new bonds shall be used exclusively for he purpose of funding or renewing the principal due r which may from time to time become due or pay-ble, of the outstanding bonds secured by said xisting bridge mortgages, or which is or may become due or payable from time to time under the sink-ng fund requirements of said mortgages, pro-vided the aggregate issue of said bonds secured hereby shall not exceed $1,250,000, which said bonds are in the following form:

Form of Bond No. ....  $1,000.

UNITED STATES OF AMERICA.

THE UNION PACIFIC RAILWAY COMPANY.

OMAHA BRIDGE RENEWAL BOND.

FOR VALUE RECEIVED, The Union Pacific Railway Company promises to pay to bearer at the

office of the company in Boston, or at the agency of the company in the city of New York, on the first day of October, A. D. 1915, one thousand dollars in gold coin of the present weight and fineness, with interest thereon at the rate of five per cent. per annum, payable semi-annually on the first day of April and October in each year, in like gold coin, upon presentation and surrender of the annexed coupons therefor.

This bond is one of a series of bonds, not exceeding twelve hundred and fifty, of even date herewith, of one thousand dollars each and numbered from one upwards, the payment of which is secured by a mortgage of even date herewith, made by said railway company to the Central Trust Company of New York, as trustee, on the bridge of said company over the Missouri River, between Omaha, Nebraska, and Council Bluffs, Iowa, and its approaches and appurtenances, as authorized by Acts of Congress of the United States; which said mortgage creates a sinking fund, out of the proceeds of which this bond may, at the option of the holders hereof, be paid as provided in said mortgage. This bond is not to become obligatory until the certificate hereon is signed by the trustee.

In Witness Whereof, the said railway company has hereunto set its corporate seal, and caused this bond

to be executed by its President and attested by its Secretary, this the first day of October, A. D. 1885.

THE UNION PACIFIC RAILWAY COMPANY,

By .....
President.

ATTEST:

..... .....
Secretary.

(Form of Coupon.)

$25.

The Union Pacific Railway Company will on the first day of.....,1...., pay to bearer at the company's office, in Boston, or at its agency, in the City of New York, the sum of twenty-five dollars, being six months' interest on Omaha Bridge Renewal Mortgage Bond No.....

HENRY MCFARLAND, Treasurer.

(Form of Trustee's Certificate.)

It is hereby certified, that this is one of the bonds of one thousand dollars each, issued under an indenture of mortgage to the undersigned as trustee.

CENTRAL TRUST COMPANY, Trustee.

By.....
President.

AND WHEREAS, The annual payments, in order to fund and retire said existing bridge bonds, secured by said mortgages of April 1, 1871, and Sept. 27, 1871,

will require the sums stated in the last column in t
following table:

THE UNION PACIFIC RAILWAY COMPAN

OMAHA BRIDGE BONDS.

Statement of Bonds Redeemable Oct. 1, 1885,
Maturity.

| Date of Semi-annual Payments. | Amount of Bonds Outstanding. | Bonds Redeemabl |
|---|---|---|
| October 1, 1885 | $1,621,000.00 | ..... |
| April 1, 1886 | 1,621,000.00 | $102,000. |
| October 1, 1886 | 1,519,000.00 | ..... |
| April 1, 1887 | 1,519,000.00 | 109,000. |
| October 1, 1887 | 1,410,000.00 | ..... |
| April 1, 1888 | 1,410,000.00 | 117,000. |
| October 1, 1888 | 1,293,000.00 | ..... |
| April 1, 1889 | 1,293,000.00 | 126,000. |
| October 1, 1889 | 1,167,000.00 | ..... |
| April 1, 1890 | 1,167,000.00 | 135,000 |
| October 1, 1890 | 1,032,000.00 | ..... |
| April 1, 1891 | 1,032,000.00 | 145,000 |
| October 1, 1891 | 887,000.00 | .... ... |
| April 1, 1892 | 887,000.00 | 155,000 |
| October 1, 1892 | 732,000.00 | ..... |
| April 1, 1893 | 732,000.00 | 167,000 |
| October 1, 1893 | 565,000.00 | ..... |
| April 1, 1894 | 565,000.00 | 179,000 |
| October 1, 1894 | 386,000.00 | ..... |
| April 1, 1895 | 386,000.00 | 192,000 |
| October 1, 1895 | 194,000.00 | ..... |
| April 1, 1896 | 194,000.00 | 194,000 |
| Total | | $1,621,000 |

Now, This Indenture Witnesseth, That the said railway company doth hereby covenant and agree with and to the said trustee, in the manner following, that is to say:

Article I. That the said railway company, in consideration of the premises and in order to secure the punctual payment of the principal and interest of the said Bridge Renewal Bonds, to be issued as aforesaid, doth by these presents grant, bargain, sell, assign, transfer and convey unto the said party of the second part, trustee as aforesaid, and to its successors and assigns, as such trustee, all and singular the bridge, approaches and appurtenances thereto, over the Missouri River, between Council Bluffs, Iowa, and Omaha, Nebraska, mentioned and described in said Act of Congress, approved Feb. 24, 1871, together with the rents, earnings, issues, tolls, incomes and profits thereof, including all parts and portions of said bridge, now constructed or hereafter to be constructed, and the depots, at Council Bluffs and Omaha aforesaid, and the railroad thereover, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same, with the lines of any railroad that are now, or shall hereafter be, constructed to the Missouri River at Council Bluffs, Iowa, or Omaha, Nebraska, a map

and description representing and describing the
eral features of which property is hereto annexed
made a part hereof, but the same shall not be co
ered exclusive of other property covered hereby;
also all the estates, lines, rights of way, as well
held by the company as to be hereafter acquire
it, and all the rights and privileges of the com
of, in, or to the said bridge, approaches and app
nances, or touching, concerning or appertainin
the maintenance, use and occupation thereof;
also all and singular the franchises now owned,
sessed or acquired, or which shall hereafter be ow
possessed or acquired by said railway company i
spect of said bridge, approaches and appurtena
thereto, and railroad thereover.

To Have and to Hold said premises unto the p
of the second part, trustee as aforesaid, its succe
and assigns forever, upon the trust, to hold the
for the use, benefit, and security of all and sing
the persons and corporations who or which shall,
time to time, be lawful owners and holders of
of said bonds issued hereunder and for securing
payment of the principal and interest of such bo
and for the uses and purposes, these presents
pressed and declared, subject only, however, to
lien thereon, or the parts or parcels thereof, as m

the date of these presents have been created by said existing mortgages, until the same shall have been surrendered, paid and satisfied in the manner hereinafter provided, and so far only as the same may be legally entitled to priority over the liens and rights created hereby. The said Railway Company covenants that these presents constitute the only lien on said property and rights, except as above declared, at the date of these presents, and that it will not dispose of nor employ the earnings of the property hereby mortgaged in any manner inconsistent with the provisions hereof.

The said railway company covenants to and with the said trustee herein, that it will not issue, sell and negotiate bonds to be issued hereunder in any manner inconsistent with the provisions of this indenture, and that it will apply the said bonds secured hereby, or the proceeds thereof, exclusively for the purpose of funding, and renewing said existing and outstanding bridge bonds in the manner herein provided; to secure which, to the holders of the bonds to be issued hereunder, it is hereby covenanted by the said railway company with each holder of any bond secured hereby, that the said trustee herein shall certify and deliver bonds hereunder, only at the times and in the amounts following:

| | |
|---|---|
| April 1, 1886 | $102,0 |
| April 1, 1887 | 109,0 |
| April 1, 1888 | 117,0 |
| April 1, 1889 | 126,0 |
| April 1, 1890 | 135,0 |
| April 1, 1891 | 145,0 |
| April 1, 1892 | 155,0 |
| April 1, 1893 | 167,0 |
| April 1, 1894 | 179,0 |
| April 1, 1895 | 15,0 |
| | $1,250,0 |

The said railway company hereby covenants a agrees with the said trustee and each bondholder cured hereby, to well, truly and punctually pay t interest on, fulfill the sinking fund requirements respect of, and fund and retire the existing brid bonds, and cancel and satisfy the same as the sa become due and payable; and that at the maturity said existing bonds, it will cause said existing mo gage to be duly cancelled and discharged of reco or assigned to the trustee hereunder, or held exc sively for the benefit of the bonds issued hereund as the trustee may require of it; and also that it w not extend the time of payment of the principal any part or the interest of said existing bonds as t same mature, but will pay and cancel the coupons a principal as the same fall due.

In no case shall any of the bonds secured here be certified by the said trustee, except upon delive

to it, from time to time, of a certificate from the trustee or trustees in the said existing mortgages, or the sworn statement of the president or treasurer of the railway company, that the railway company has paid to the said trustee or trustees, or to said London and San Francisco Bank (limited), London, or to Messrs. Drexel, Morgan & Co., New York, or the successors of either of them, a specified amount of money, to be applied under said existing bridge mortgages to the funding and retiring of bonds secured thereby, whereupon the trustee in this indenture shall, from time to time, certify and deliver to the railway company bonds secured hereby, not exceeding the amount specified above, to the par amount of the said specified amount of money so paid as aforesaid to said trustee or trustees of the existing bridge mortgages, or to said bank, or to said Drexel, Morgan & Co., or to the successors of either of them, and the trustee hereof is not bound to look beyond said certificate of the trustee or trustees of the existing mortgage, or a resolution of the railway company, verified by the oath of its president or treasurer, stating that it has made payment of a specified amount of money to said last named trustee or trustees, or to said London and San Francisco Bank (limited), London, or to Messrs. Drexel, Morgan & Co., New York, or to the suc-

cessors of either of them; the first certification
bonds hereunder, to the extent of one hundred
two thousand dollars, to be made by the trustee wi
out further corporate act on the part of said railw
company, or certificate or sworn statement as requi
for other certifications; and thereafter bonds ar
be certified by the trustee from time to time, as ab
specified and provided.

The said railway company hereby covenants
agrees that it will pay to the trustee herein on
first day of March, 1897, and on the same day e
year thereafter, until the bonds secured hereby
paid a sufficient sum of money to provide for a si
ing fund, to be composed of a fixed sum of forty-f
thousand dollars gold coin of the United States, wh
sinking fund is to be annually applied by the trus
in the purchase and redemption of bonds as her
set forth.

If bonds secured hereby sufficient in amount
exhaust the cash in the hands of the trustee, can
be bought in open market by said trustee at a pr
not exceeding five per cent. above their par value
interest, then said trustee shall invest any and
moneys thus received, and all accumulations and
come thereof, in the purchase of any of the bonds
the Union Pacific Railway Company, or in the p

chase of the bonds of any railroad now constructed, or hereafter to be constructed, which connects with the road known as the Union Pacific Railroad (extending from Council Bluffs, Kansas City, and Leavenworth on the east, to Ogden and Denver on the west, and from Denver to Cheyenne), or of the first mortgage bonds of any branches or extensions thereof, or of connecting railroads, now existing or hereafter to be constructed or acquired, and of which road so connecting therewith the Union Pacific Railway Company is the owner or the lessee, or owns the majority of the capital stock thereof; and if no satisfactory bonds of any of the foregoing descriptions can be purchased on terms which will yield or pay interest on the amount necessary to be invested therein at the rate of at least four per cent. per annum, then the trustee in this indenture may purchase other first mortgage bonds of any other railroad companies, or state, territorial, county, precinct, township, or city bonds, which will yield or pay interest at the rate last mentioned.

ARTICLE 2. If the said railway company shall pay the bonds, principal and interest, secured hereby, at the times and in the manner aforesaid, and keep the covenants herein on its part, this indenture shall be satisfied and discharged of record.

ARTICLE 8. Until default be made by the railway company as herein provided, it shall be entitled to the possession, use and operation of the said bridge, and to receive the rents, earnings, incomes and profits thereof; provided, however, that in case default be made by said railway company in the payment of the interest or principal of the existing bridge bonds, or in respect to the sinking fund requirements of the existing bridge mortgages, or in any covenant or condition therein contained, or in the payment of interest upon the bonds secured hereby, or in respect of the sinking fund provisions herein contained, or in the payment of the principal of the bonds, themselves, or in any covenant or condition herein contained, and such default shall continue for three months after written demand for performance made upon the company by the trustee or any of the bondholders secured hereby, then and in either and every such case said trustee is entitled to take possession of the property hereby mortgaged, operate said bridge and fix the tolls, rates and charges thereon for the use thereof, to receive the rents, earnings, incomes, and profits thereof, and to make all necessary repairs, and to receive just and reasonable compensation for its services, and to apply the net tolls, income and revenue of said bridge to the payment of the interest in arrear,

which shall fall due on the outstanding bonds se-
red hereby in the order in which such interest shall
ve become due, ratably, and after paying all such
terest which shall have become due, to apply the
me to the satisfaction of the principal of the afore-
id bonds which may be at the time due and unpaid,
the principal shall have become due and payable,
herein provided, ratably.

ARTICLE 4. So long as the security hereby created
hall subsist, the company will insure and keep insured
the name of the said trustee for the benefit and
rotection of the holders of the bonds secured hereby,
he depots and buildings connected with the said
ridge, against loss or damage by fire; and the pro-
eeds of such insurance shall be applied, under the
irection of the trustee, in restoring the property to
ts condition at the time of the injury. And the rail-
way company covenants to restore such property to
ts condition at the time of the injury, and to furnish
ll moneys necessary to said end, over and above the
proceeds of such insurance. And the railway com-
pany also covenants to maintain and preserve said
bridge and mortgaged property in good order and con-
dition.

ARTICLE 5. If default shall be made as provided
in article (3) hereof, and such default shall continue

for three months after demand made in writing as aforesaid, said trustee may, and at the request of the holders of one-fourth in amount of the bonds issued hereunder, and then outstanding, and upon being sufficiently indemnified, shall declare the principal sum to be due, and thereupon the principal of all the bonds secured by this indenture shall be immediately due and payable, anything contained in the bonds or herein, to the contrary notwithstanding; and with or without entry as it may deem best, shall cause the said bridge, and lines, and all other property, matters and things hereinbefore expressed to be conveyed, to be sold by public auction in the City of Council Bluffs, Iowa, giving ninety days' notice of the time, place and terms of sale, once in each week in one or more papers published in the city of New York, and upon such sale shall execute to the purchaser or purchasers, deeds, releases, transfers and conveyances of the property, estates, rights and securities thus sold, and shall apply the proceeds of such sale, together with all moneys in its hands which shall be received under or by virtue of these presents, after deducting all expenses incurred in the execution of the trust and powers hereby created, first to the payment of all interest coupons of said bonds at the time remaining due and unpaid, in the order in which the same shall

ve become due, ratably to the persons entitled ereto, and thereafter to the payment of the princi- l of said bonds equal and without preference, hether the same shall have become due or not, and all pay over the surplus (if any) to the said railway mpany; or at its election proceed to foreclose this ortgage by a suit or suits in equity, or at law or herwise, as it, the trustee, being advised by counsel arned in the law, shall deem most effectual to en- ire such rights, the proceeds of sale thereunder being pplied in the manner last above provided. It being nderstood, and it is hereby expressly declared, that he rights of entry and sale hereinbefore granted are ntended as cumulative remedies, additional to all ther remedies allowed by law, and that the same hall not be deemed, in any manner whatsoever, to leprive the trustee or the beneficiaries under this rust, of any legal or equitable remedy by judicial roceedings, according to the true intent and mean- ng hereof.

Provided always, and it is hereby expressly de- lared and agreed, that no holder of a bond or of any onds secured hereby, shall have the right to insti- tute any suit, action, or proceedings, in equity or at law, for the foreclosure of this indenture, or for the execution of the trusts hereof, or for the appointment

of a receiver or any other action, suit or remedy he
under, without first giving notice in writing to th
trustee of default having occurred and continued, a
in this article aforesaid, and requesting the truste
and affording it a reasonable opportunity, to insti
tute such action, suit or proceeding in its own name
or to proceed to exercise the powers hereinbefore
granted, and also offering to it adequate security and
indemnity against the costs, expenses and liabilities
to be incurred therein or thereby; and such notifica
tion, request and offer of indemnity are hereby de
clared to be conditions precedent to any suit or action
or right of suit or right of suit or action by any
holder of a bond or of any bonds secured hereby for
the foreclosure, or for the execution of the trusts of
this indenture, or for the appointment of a receiver,
and to any other action, suit or remedy hereunder.

And it is hereby provided, declared and agreed
that in case any sale shall be made of the said mort
gaged estate, chattles real, interests, estates, appur
tenances, fixtures, equipments, property lands, rights,
privileges, immunities or franchises, either by the
exercise of the powers granted in this article of this
instrument, or pursuant to or under a judicial decree
or judgment of a Court, the purchaser or purchasers
at said sale or sales shall be entitled in making settle

ment for and payment of the purchase money, to deliver to the trustee, or in case of a judicial sale, to the person or persons legally appointed and qualified to receive the payment of such purchase money, and to turn in and use any of the bonds or coupons secured by these presents, in or towards the payment of said purchase money; reckoning and computing said bonds or coupons at a sum equal to, and not exceeding, that which shall be payable out of the net proceeds of said sale, to the purchaser or purchasers, as the holder or holders of said bonds or coupons, for his or their just share and proportion in that character, of said net proceeds, upon a due accounting concerning, and apportionment and distribution of, the said net proceeds.

And the railway company further agrees, that if any default be made in the covenants, agreements and provisions herein contained, or in said existing mortgages contained, a decree for specific performance, in addition to any other right or remedy therefor, and not in exclusion thereof, may be obtained; and pending the application thereof, and also pending any other proceedings by the trustee to enforce the rights of the trustee and the bondholders under these presents, or to foreclose this mortgage, one or more receivers of such premises, franchises and property, and

of the earnings, profits and income thereof, shall
the discretion of the trustee, be appointed and su
other and further or equitable relief shall be had
shall be proper and adequate in the premises.

ARTICLE 6. If any such sale shall be made
provided in Article 5, or by virtue of any judi
decree of foreclosure, the company shall thereafter
perpetuity be bound to pass all the passengers a
freight of the said railway company passing acr
the Missouri over the said bridge and lines, and n
to avail itself of or use any bridge or ferry across t
Missouri, now or hereafter existing within two
miles of a straight line above or below the said brid
hereinbefore mentioned, and will pay as a first tra
portation lien upon such traffic, such tolls as sh
from time to time be lawfully charged by the p
chasers of the said bridge and lines in respect
goods and passengers passing over or using the sa

Notwithstanding any such sale, the said railw
company shall remain bound to pay all the bondho
ers so much of the principal and interest of th
bonds, if any, as shall not have been paid out of
proceeds of such sale.

ARTICLE 7. The said railway company here
covenants and agrees to well and truly pay, in g
coin of the United States of America, of the pres

standard of weight and fineness, the said bonds hereby secured, when and as the same shall become due and payable; and likewise will well and truly pay all the interest which shall from time to time become due and payable upon said bonds when and as the time shall become due and payable.

ARTICLE 8. The said railway company further hereby covenants and agrees with the said trustee, and each bondholder secured hereby, that as said existing bonds are redeemed or paid, either out of the proceeds of the bonds issued hereunder, or the other resources of said company, the trustee and the holders of the bonds issued under this indenture shall be, and they are subrogated to all the rights, liens and equities which pertained to the bonds so paid and satisfied, whether the same arise under this indenture, the said existing mortgage, acts of Congress, acts of the company or otherwise, and that such bonds shall be turned over to the trustee hereunder, for the further security and protection of the holders of bonds secured hereby.

ARTICLE 9. The said railway company covenants and agrees at all times hereafter to pay all taxes and assessments, whether federal, state, county or municipal, which are, or may hereafter be assessed or imposed against the said premises hereinbefore granted,

or intended so to be, and all federal, state, county,
municipal taxes or charges which may be impo
upon, or be required by law to be deducted by s
company or the bondholders, either from the pri
pal or interest of said bonds, at the time or times wh
the said taxes or assessments may be respectively
and payable; and does also agree to waive,
hereby irrevocably waives all benefit or advantage
any valuation, stay, appraisement, redemption or
tension laws, now existing, or which may hereafte
passed, which but for this provision, agreement
waiver, might be availed of to prevent or postp
the absolute and immediate sale of said premi
under the provisons herein contained, or by judi
authority; and agrees that it will not set up or seek
take the benefit or advantage of the same.

ARTICLE 10. The said railway company furt
covenants and agrees that it shall and will at all ti
hereafter, upon the reasonable request of the trus
make, execute, acknowledge, and deliver all s
further deeds, conveyances, assignments, and as
ances in the law for the better assuring to the tru
upon the trusts and for the purposes herein expre
or intended, the said premises and property her
mortgaged or conveyed in trust, or intended so to
whether now owned or possessed by or vested in

said railway company, or subsequently shall be acquired by or vested in it relating thereto, including all franchises now held or that shall be hereafter acquired relating thereto.

ARTICLE 11. The trustee herein appointed may be removed by a court of competent jurisdiction upon the application of a majority in interest of the holders of the outstanding bonds secured hereby, without cause, and upon the application of a less number for cause. In case of any vacancy in said trust by reason of removal, resignation, or otherwise, a successor may be appointed by the holders of a majority in interest of all the bonds secured hereby and then outstanding, excluding for this purpose all bonds held by said railway company, directly or indirectly, by instrument or instruments in writing under their hands and seals, and thereupon such successor shall succeed to and shall possess and exercise all the rights, duties, and powers herein conferred or imposed upon the party hereto of the second part.

ARTICLE 12. The word "trustee" used herein is intended to mean the party of the second part hereto, or any successor trustee, and any successor trustee shall be possessed of and exercise all the powers and duties granted and created by these presents.

ARTICLE 13. The said party of the second part

hereby accepts the trusts created by these pres
and agrees to execute the same to the best o
ability. In the execution of its trusts, the tru
shall not be answerable except for willful defaul
gross negligence, and shall be entitled to reason
compensation for the discharge of its duty, and t
reimbursed for all costs and expenditures reason
incurred by it in the execution of its trusts.

In Witness Whereof, the said railway comp
party of the first part, has caused this instrumen
be signed by its President and its corporate seal t
hereunto attached, attested by its Secretary; and
said trustee, party of the second part, has here
set its seal, and caused the same to be attested
this instrument to be signed by its proper officers,
day and year first above written.

The Union Pacific Railway Company,

(seal) By C. F. Adams,

Attest: Presiden

Henry McFarland,

Secretary.

The Central Trust Company of New York,

(seal) By F. P. Olcott

Attest: Presiden

C. H. P. Robins,

Secretary.

STATE OF MASSACHUSETTS, } ss.
COUNTY OF SUFFOLK. }

Be it remembered, that on this second day of May, 1887, personally appeared before me, a Notary Public in and for said county and state, Charles F. Adams, to me personally known, and known to me to be the President of the Union Pacific Railway Company, and said Adams then and there acknowledged that he executed the foregoing mortgage or deed of trust for and on behalf of the said Union Pacific Railway Company, and as its voluntary act and deed, for the uses, purposes and considerations therein stated, and that the seal attached to said instrument is the corporate seal of said railway company, and that said seal was so attached thereto, and he signed said instrument, by order of the board of directors of said railway company.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

JAMES G. HARRIS,
(SEAL) Notary Public.

STATE OF NEW YORK, } ss.
CITY AND COUNTY OF NEW YORK, }

Be it remembered, that on this twenty-fifth day of May, 1887, personally appeared before me, a No-

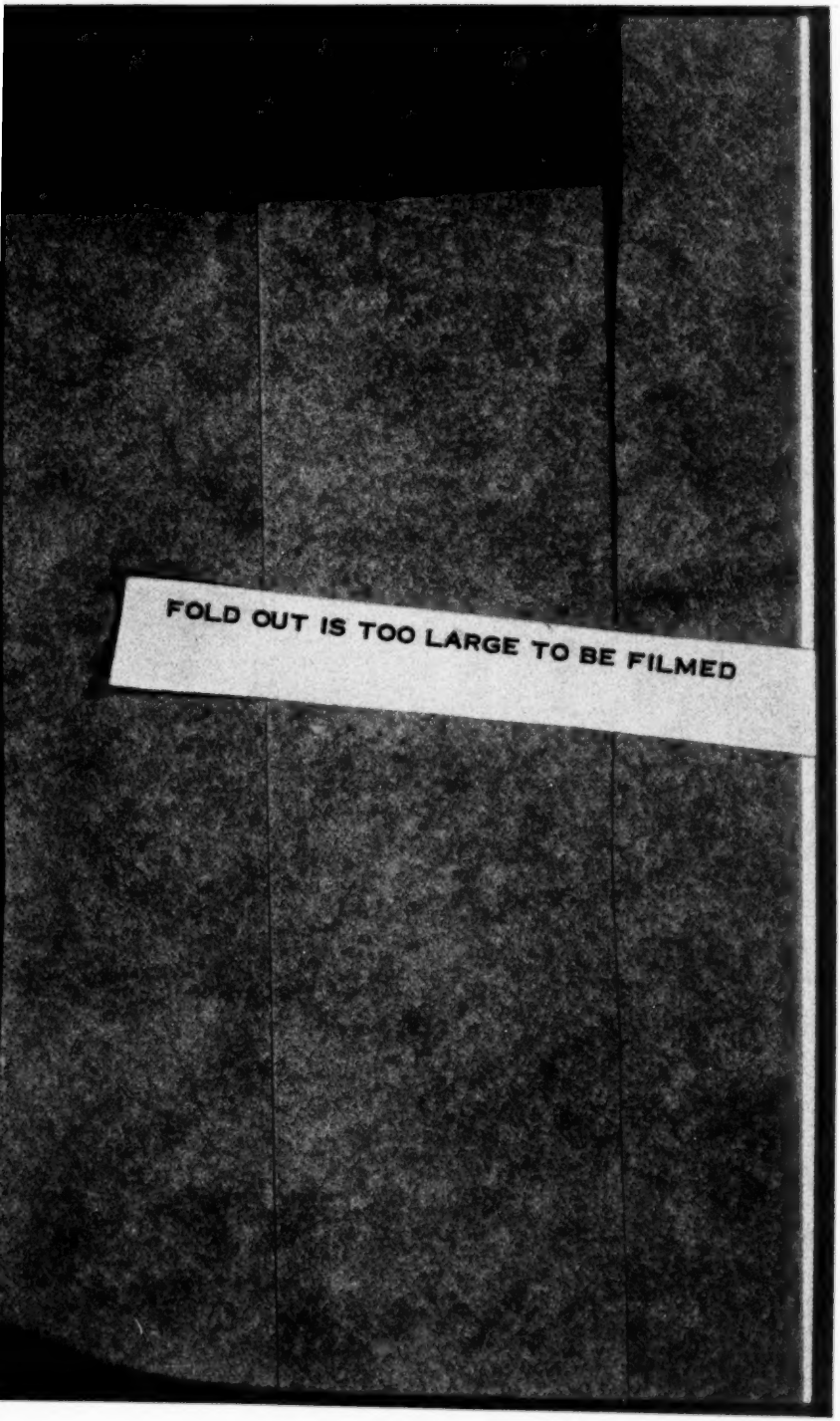
tary Public in and for said county and state, P
Olcott, to me personally known and known to me
be the President of the Central Trust Company, a
said Olcott then and there acknowledged that he e
ecuted the foregoing mortgage or deed of trust
and on behalf of the said Central Trust Compan
and as its voluntary act and deed, for the uses, pu
poses and considerations therein stated, and that th
seal attached to said instrument is the corporate se
of said Trust Company, and that said seal was so a
tached thereto, and he signed said instrument b
order of the board of directors of said trust compan

In Witness Whereof, I have hereunto set my han
and official seal, the day and year first above writte

Herbert M. Hyde,

(seal.) Notary Public,

New York City and County.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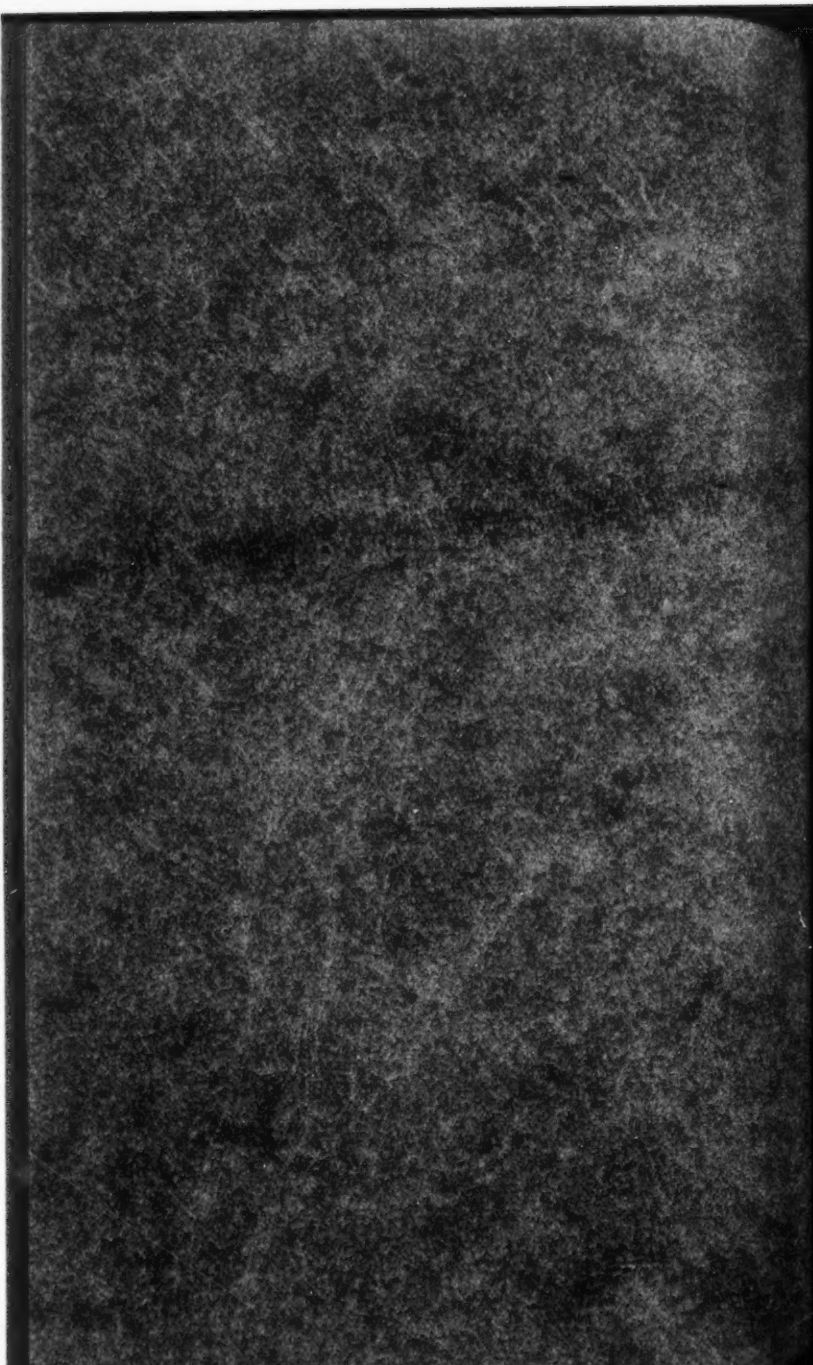

## Complainant's Exhibit No. 4.

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ARTICLES OF AGREEMENT, made and entered into first day of May, in the year one thousand eight dred and ninety, by and between The Union Pa- Railway Company, a corporation organized and ting under the laws of the United States, herein- r referred to as the "Pacific Company;" the Omaha epublican Valley Railway Company, a corporation nized and existing under the laws of the State of raska, herein referred to as the "Republican ley Company;" the Salina & Southwestern Rail- Company, a corporation organized and existing er the laws of the State of Kansas, hereinafter re- d to as the "Salina Company;" the Chicago, k Island & Pacific Railway Company, a corpora- organized under the laws of the States of Illinois Iowa, and existing in and under the laws of said es and the State of Nebraska, hereinafter referred the "Rock Island Company," and the Chicago, sas & Nebraska Railway Company, a corporation nized under the laws of the States of Kansas and rado, and existing in and under the laws of said s and of the State of Nebraska, hereinafter refer- to as the "Kansas Company."

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The Pacific Company owns and operates a railroad with two main lines, one of which extends from a point in the City of Council Bluffs, in the State of Iowa, by way of the City of Omaha and Valley Station, in the State of Nebraska, to Ogden, in the Territory of Utah; and one from a point in the City of Kansas City, in the State of Missouri, by way of the Cities of Topeka and Salina, in said state, to the City of Denver, in the State of Colorado· and it also operates as lessee several auxiliary and branch lines extending from said main lines, among which are the railways of the Omaha & Republican Valley and the Salina Companies.

The Republican Valley Company owns a railroad which extends from Valley Station, on one of the main lines of the Pacific Company, in the State of Nebraska, by way of the Cities of Lincoln and Beatrice, in said state, to Manhattan, in the State of Kansas, on the other main line of the said Pacific Company, which railway is operated, as above stated, by the Pacific Company.

The Salina Company owns a railway which extends from Salina, in Saline County, on one of the main lines of the Pacific Company, to McPherson, in the County of McPherson in the State of Kansas, on one of the main lines of the Kansas Company, which

lway from Salina to McPherson is also operated, as ve stated, by the Pacific Company.

The Rock Island Company owns and operates a lway which extends from the City of Chicago, in State of Illinois, to the City of Council Bluffs, in State of Iowa; to the City of St. Joseph, in the te of Missouri, at which place it is connected with railway of the Kansas Company by a bridge oss the Missouri River which it operates as lessee, a point in the State of Missouri opposite the City Atchison, in the State of Kansas; to Cameron, in State of Missouri, and Leavenworth, in the State Kansas; and it operates as lessee that portion of Hannibal & St. Joseph Railway which extends m Cameron to Kansas City, in the State of Mis-ri, at which point it connects with the railway of Pacific Company, a portion of which it operates lessee; also the Chicago, Kansas & Nebraska Rail-y, in the States of Nebraska, Kansas and Colorado, l in the Indian and Oklahoma Territories.

The Kansas Company owns a railway, the princi-lines of which extend from a point on the Mis-ri River, in the State of Kansas, opposite the City St. Joseph, in the State of Missouri, by way of the ies of Horton, in the State of Kansas and Beat-, in the State of Nebraska, to Colorado Springs,

in the State of Colorado; also from the same initial point, by way of Horton, Topeka, McPherson and Hutchinson, to Liberal, in the State of Kansas; also from Herrington, on the last named line, in the State of Kansas, to El Reno, in the Territory of Oklahoma; and it is also the lessee of that portion of the Union Pacific Railway which extends from the City of Kansas City, at which point it is connected with the railway of the Hannibal & St. Joseph Railroad Company, a portion of which the Rock Island Company operates as lessee, to the City of Topeka, at which point it connects with the railway of the Kansas Company; of the bridge across the Missouri River at the City of St. Joseph; and of the Denver & Rio Grande Railroad between the Cities of Denver and Pueblo, in the State of Colorado, all of which lines are operated by the Rock Island Company under a lease of all the railways and railway property owned by or leased to the Kansas Company, for the term of nine hundred and ninety-nine years, commencing on the fifteenth day of May, 1886.

The Rock Island Company proposes to extend its railway from the present terminus thereof, at the City of Council Bluffs, to a connection with the railway of the Kansas Company, at the City of Beatrice, in the State of Nebraska. The parties hereto believe that

the interests of all will be promoted by incorporating in the proposed extension a portion of the main tracks of the Pacific Company, in the Cities of Council Bluffs and Omaha, the bridge over which said tracks pass across the said Missouri River, between said cities, and a portion of the railway of the Republican Valley Company, between a point at or near the north boundary of the City of Lincoln, to a point at which it connects with the tracks of the railway of the Kansas Company, at the City of Beatrice, by a lease by the Rock Island Company to the Pacific Company of the joint use and possession of the railway owned by the Kansas Company, extending from the City of McPherson, in the County of McPherson, and State of Kansas, to the point where the Hutchinson, Oklahoma & Gulf Railroad connects with the railway of the Kansas Company, west of the Arkansas River, in the City of South Hutchinson; and a lease by the Rock Island Company to the Pacific Company of the right to operate trains over the railway which the Rock Island Company proposes to construct and operate between the Cites of South Omaha and Lincoln.

THEREFORE, In consideration of the premises, and of the mutual covenants and agreements hereinafter set out and contained, the parties above named have

severally entered into covenants, promises and agr
ments with each other as follows:

## ARTICLE I.

The Pacific and Rock Island Companies covena
promise and agree each with and to the other:

### Section 1.

1. The Pacific Company hereby lets the Ro
Island Company into the full, equal and joint po
session and use of its main and passing tracks no
located and established, or which may be hereaft
located and established, between the terminus of su
tracks in the City of Council Bluffs, in the State
Iowa, and a line drawn at a right angle across sa
tracks, within one and one-half (1½) miles souther
from the present passenger station of South Omah
in the State of Nebraska, including the bridge
which said tracks extend across the Missouri Riv
between said Cities of Council Bluffs and Omah
connections with Union Depot tracks in Omaha, t
side or spur track leading from its main tracks to t
lower grade of the Pacific Company's sidings a
spur tracks in Omaha, and such extensions there
as may be hereafter made; side tracks in Omaha
which to receive from and deliver to the Rock Isla

Company freight that may be handled through the warehouses or switched by the Pacific Company; the connections with the Union Stock Yards tracks in South Omaha, and conveniently located grounds in South Omaha, on which the Rock Island Company may construct, maintain and exclusively use a track or tracks, aggregating three thousand (3,000) feet in length, for the storage of cars and other purposes, for the term of nine hundred and ninety-nine (999) years, commencing on the first day of May, in the current year; for which possession and use the Rock Island Company covenants, promises and agrees to pay to the order of the said Pacific Company, monthly, during the continuance of said term, the sum of three thousand seven hundred and fifty (3,750) dollars, with the proportion of the costs and expenses actually incurred during the month for which such payment is made, in maintaining, repairing and supplying with water that portion of such main tracks jointly used and situated east of the east end of said bridge and in the City of Council Bluffs, and in paying taxes and assessments legally laid and levied thereon, which proportion shall be to the aggregate of the amount so paid as the proportion of the number of wheels per mile operated during the same month by the Rock Island Company over said tracks, or any part thereof,

shall be to the whole number of wheels opera
mile over the same tracks during the same
which sum the Pacific Company agrees to rec
full compensation for such possession and use.

2. The Rock Island Company shall h
right to make such connection between its own
and the leased tracks of the Pacific Company
be necessary or convenient in the operation of
line or lines in connection with such leased tra
to the conduct of its business as a common
If the parties cannot agree as to the location o
the said tracks above mentioned, and the con
thereof with the main tracks of the Pacific Co
and with the tracks of the Rock Island Comp
as the line to be established across the main t
the Pacific Company near South Omaha, or as
connections which shall be made between the
of the Pacific Company and the Rock Island
pany, or as to the location of grounds upon wh
storage tracks above mentioned may be const
the same shall be decided by referees to be ap
in the manner prescribed in Article III, Se
hereof.

3. The Pacific Company will, when and s
as it may be required so to do by the Rock Islan
pany, receive, deliver and store local freight

ported to and from Omaha by the Rock Island Company, in the same manner, and with the same promptness and care with which it receives, delivers and stores freights transported by its own cars and trains; for which the Rock Island Company will pay a reasonable compensation, not exceeding that charged at the same time for like service to any other railway company. If there shall be any difference between the parties as to the manner in which such service is rendered, or the compensation to be charged therefor, such difference may be determined by reference in the manner prescribed in Article III, Section 9, hereof. Nothing herein contained shall be so construed as to prevent a termination of the arrangement in this paragraph provided upon the election of the Rock Island Company.

4. It will secure to the Rock Island Company the right to use the union passenger station, the erection of which is proposed at the City of Omaha, upon terms in every respect as favorable as those which shall be accorded to any other company which has or may acquire the right to such use.

SECTION 2.

1. The Pacific Company hereby lets the Rock Island Company into the full, joint and equal posses-

sion and use of all its tracks, buildings, station
ings and switches, forming a part of and si
along the line of the railway of the Republica
ley Company, from a point thereon, to be he
definitely fixed, on or near the northern bound
the City of Lincoln, in the State of Nebraska
point where the tracks of said railway connec
those of the railway of the Kansas Company
City of Beatrice in said state, including all and
portion of that part of its railway and appur
property between the points aforesaid, with
provements and betterments thereon, and add
thereto, which may be jointly used by the p
excluding the yards and depots of the lessor a
coln and Beatrice, but including main and nec
passing tracks at said points, for the term of
hundred and ninety-nine (999) years, commenci
the first day of May in the current year; for
possession and use the Rock Island Company
nants, promises and agrees to pay to the order
Pacific Company, monthly, during the continua
said term, rental which shall be computed as h
after provided.

2. The Rock Island Company may make
connections of its own tracks with the tracks
Republican Valley Company, at and between Li

and Beatrice, as may be convenient or necessary to the operation of its own railway and the transaction of its business as a common carrier. If the parties cannot agree as to the location of such tracks and connections, or as to the manner in which they shall be constructed, they may be fixed by the decision of referees appointed as provided in Article III., Section 9, hereof.

3. The Rock Island Company will not do any business as a common carrier of persons or property to or from any station between the Cities of Lincoln and Beatrice on said leased line of railroad. It will give reasonable notice to prevent the entry of passengers into its trains, and if, despite such notice, passengers do enter its trains at such intermediate stations, it will account for and pay to the Pacific Company the fares which may be collected from them.

SECTION 8.

1. The Rock Island Company hereby lets the Pacific Company into the full, joint and equal possession and use of all its tracks, buildings, stations, sidings and switches, forming a part of that line of railway owned by the Kansas Company between the points at which said railway is intersected at or near the City of McPherson, in the County of McPherson,

in the State of Kansas, to the point where it is i
sected by the tracks of the Hutchinson, Oklaho
Gulf Railroad Company, west of the Arkansas R
in the City of South Hutchinson, in the Count
Reno and State of Kansas, including all and e
part of the railway leased and demised, with
appurtenant property, between the points afore
and all the improvements and betterments ther
and additions thereto, which may be jointly use
the parties, excluding the yards and depots of
lessor at the Cities of McPherson and Hutchinson
including main and passing tracks in the last n
city, for the term of nine hundred and ninety-
years, commencing on the first day of May, 1890;
which possession and use the Pacific Company
nants, promises and agrees to pay to the order o
Rock Island Company rental to be computed in
manner hereinafter provided.

2. The Pacific Company may make such co
tions of the tracks of the Salina Company at Mc
son, and of the tracks of the Hutchinson, Oklah
& Gulf Railroad Company west of the Ark
River, in South Hutchinson with the tracks o
Kansas Company, and such connections betwee
Pherson and Hutchinson as may be convenie
necessary to the operation of its own railway an

transaction of its business as a common carrier. If the parties cannot agree as to the location of such connections, or in the manner in which they shall be made, they may be fixed by the decision of referees, appointed as provided in Article III, Section 9, hereof.

3. The Pacific Company will not do any business as a common carrier of persons or property to or from any stations between McPherson and Hutchinson. It will give reasonable notice to prevent the entry of passengers into its trains, and if despite such notice, passengers do enter its trains, it will account for, and pay to the Rock Island Company all fares that may be collected from them.

SECTION 4.

1. The Rock Island Company hereby lets, leases and demises to the Pacific Company for the term of nine hundred and ninety-nine (999) years, commencing on the first day of October, 1890, the right and privilege to move and operate over the tracks of the railway it proposes to construct between the Cities of South Omaha and Lincoln, in the State of Nebraska, from the point where the tracks of the parties shall intersect in South Omaha, to that at which they shall intersect near to the boundary line of the City of

Lincoln, its passengers and freight trains, including engines and cars of all classes, in the transaction of its business as a common carrier, and to use in such movement the necessary side and passing tracks and structures between the points above named; and it promises and agrees to furnish and supply the cars and engines of said Pacific Company when being moved on said railway, with water, and to deliver, on the requisition of said company, coal for use on such engines and cars of said company while on its tracks, to keep and maintain said tracks and appurtenances thereto in good repair and condition during the continuance of said term and to accept as full compensation for such use of its tracks, and for all water and coal which it shall furnish to said Pacific Company, the sum of twenty-five (25) cents per mile for each and every mile over which any passenger train of said last-named company may be moved, and thirty (30) cents per mile for each and every mile over which any freight train of said company may be moved on said track; the actual cost of the coal delivered on such requisition, on the tenders and cars of such Pacific Company, and fifty (50) cents per tank for each and every tank of water taken by said company; which compensation the Pacific Company promises and agrees to pay, on statements of account to be made

monthly; and when the compensation in any year for mileage shall be less than would be produced by the operation of two passenger and two freight trains per day each way over the entire length of the main track of the Rock Island Company, between the cities of South Omaha and Lincoln, it, the Pacific Company, will pay to the order of the Rock Island Company, in addition to the compensation for actual mileage, the difference between such compensation and that which would be produced by the operation of two freight and two passenger trains each way daily during the entire year.

2. Each train moved by the Pacific Company over said main track shall be limited to the number of cars which can be drawn over the same by one ordinary ten-wheel engine. Provided, however, that when extraordinary conditions render two or more such engines necessary for the hauling of trains, which ordinarily could be drawn by one such engine, such additional power may be used while such conditions continue. And, provided further, that if the Rock Island Company shall elect to use on such line, in its regular business, engines having greater power than the ten-wheel engines now in use, the Pacific Company shall have the right to use engines having equal power; but when such engines are used, the

compensation to be paid shall increase in proportion with the increase of power.

3. The Pacific Company will not do any business as common carrier of persons or property to or from stations located on the Railway of the Rock Island Company between the cities of South Omaha and Lincoln, and it will give reasonable notice to prevent the entry of passengers into its trains, and if, despite such notice passengers do enter its trains, it will account for and pay to the Rock Island Company all fares which may be collected from them.

SECTION 5.

1. The parties to the leases set out and contained in Sections 2 and 3 of this Article will pay to each other rental for the possession and use of the leased and demised property as follows:

The Rock Island Company will pay to the Pacific Company, monthly, for the possession and use of its railway and appurtenant property at and between Lincoln and Beatrice in the State of Nebraska, the sum of the following amounts:

(1) An amount equal to one-twelfth of two and one-half per centum of the value of the main track leased and demised, which value it is agreed is fifteen thousand ($15,000) dollars per mile.

(2.) An amount equal to the proportion of the and expense actually, necessarily and reasonably rred and paid for maintaining, renewing, repair- and supplying with water the railway leased and ised, salaries of officers and employes whose du- pertain to the joint use thereof, and for the pay- t of taxes and assessments legally laid or levied on property during the month for which such rental aid, which proportion shall be to the aggregate of sum so paid as the number of wheels per mile run ng such month by the Rock Island Company over leased and demised railway bears to the whole ber of wheels operated over said leased property mile during the same period.

The Pacific Company shall pay to the Rock nd Company for the possession and use of the rail- of the Kansas Company between and at McPher- and South Hutchinson, a rental which shall be puted in the manner prescribed by this paragraph: Each of said parties will accept the rental computed when paid, as full compensation for possession and use of the railway by it leased and ised.

2. If the Rock Island Company shall at any time ng the continuance of the term of this indenture, n additional side or double tracks between the

s

City of Lincoln and the City of Beatrice, or along any portion of the line of railway between said points essential or necessary, it shall call upon the Pacific Company to construct the same. If upon reasonable notice the Pacific Company shall neglect or refuse to construct said tracks, the question may be decided by referees as hereinafter provided, and their decision shall be final, and shall be carried out by the Pacific Company without delay.

The Rock Island Company shall pay monthly, as compensation for the use of the same, one-twelfth of two and one-half per centum per annum of the cost of such construction, and its share of maintenance thereof, based upon wheelage as hereinbefore provided. The Rock Island Company may, at its election, use any grounds or additional tracks or structures of the Pacific Company at Lincoln, and if it elects so to do, it shall, from the time of such election, pay monthly to the Pacific Company, as compensation for such use, one-twelfth of two and one-half per centum upon the then present value of such grounds and tracks then existing, and a like percentage of the cost of such tracks, grounds and structures as shall be acquired or constructed by the Pacific Company at its request, and its share of the maintenance and renewal

thereof, after such election, based upon wheelage as hereinbefore provided.

If the Rock Island Company shall at any time during the continuance of the term of this indenture, desire any side, spur, or other tracks at the said City of Lincoln, connecting its own tracks with the tracks of any other railway company, or to any industry, or shall desire any facilities or conveniences which shall not then exist, it shall give to the said Pacific Company notice of such desire, and the said Pacific Company may, within thirty days after receiving such notice, proceed to construct such tracks or acquire such facilities and conveniences; and the Rock Island Company will pay for the use of the same in monthly installments as hereinbefore provided, a sum equal to one-twelfth of two and one-half per centum per annum from the date of such construction or acquisition, upon the cost of constructing or acquiring such tracks, facilities and conveniences, and shall pay in addition thereto its share of the cost of maintenance thereof, based upon wheelage, as hereinbefore provided.

If the Pacific Company shall refuse to construct such tracks or acquire such facilities or conveniences within a reasonable time, the Rock Island Company may, at its own expense, in its own name, or in the

name of some third person or corporation, as it may be advised, construct or acquire the same; and it shall be the sole owner, and have the right to use and remove the same, or any part thereof, during the term of this indenture; Provided however, that if the Pacific Company shall desire to use any of such tracks, facilities or conveniences, it shall have the right to do so, but shall allow to the Rock Island Company, monthly, for such use a sum equal to one-twelfth of two and one-half per centum per annum on the cost thereof, from the date of the acquisition or construction of the same, and in addition thereto a portion of the expenses which shall be incurred in maintaining the same from the date of its election to use the same, which shall be ascertained on a wheelage basis as hereafter provided: And provided further, that the Pacific Company shall have the right at any time before such tracks, facilities and conveniences are removed by the Rock Island Company, to purchase the same from the Rock Island Company by paying to said company the cost of construction or acquisition of the same, with five per centum per annum thereon from the date of such construction or acquisition; Provided, that if it shall have already paid for the joint use thereof as hereinbefore provided, it shall be required to pay, in addition to the

ost thereof, but two and one-half per centum per nnum on such cost of construction or acquisition.

The Union Pacific Company shall have the right o use any and all grounds, tracks, buildings and acilities now owned or hereafter to be acquired by he Rock Island Company at the City of Hutchinson, pon the terms and conditions in the preceding para- raphs provided; and if the Pacific Company shall ereafter acquire any grounds, tracks, buildings or acilities in the city of Hutchinson, the Rock Island Company may use or purchase the same upon the erms and conditions in the preceding paragraph pro- ided.

## ARTICLE II.

The Republican Valley, the Salina and the Kansas Companies, severally covenant, promise and agree with he Pacific and Rock Island Companies:

### Section 1.

1. They do severally approve, ratify and con- irm the several leases and demises set out and ex- ressed in Article I hereof. Each undertakes that it ill do no act nor permit any act to be done, the doing f which it has the power to prevent, the effect of hich would be to in anywise impair the validity, erformance or operation of any of said leases or de-

mises or of any of the provisions thereof; and
and every act which may be done by the Pacific o
Rock Island Company in the performance of the
eral covenants, promises and agreements in the
several leases set out are hereby approved, rat
and confirmed.

## ARTICLE III.

The several parties hereby covenant, promise
agree to and with each other:

### Section 1.

1. Each, that it is legally incorporated and
power to enter into this agreement, and that it acc
the leases and demises in these articles set out
contained, in which it is named as lessee; with
upon the terms and conditions coupled with
leases and demises; that it will upon its part pres
keep and perform all covenants and agreements
assumed or made by the terms of these articles;
it will from time to time take such steps as sha
necessary to continue all contracts in these article
out in full force and effect; and that any right or
which it now has or may hereafter acquire in
any railway or property hereby let and demised
be held by it subject to the rights of any lessee u
the provisions of these articles.

2. Each contract of lease contained in these articles shall attach to that portion of the railway and appurtenant property leased and demised during the corporate existence of the owner thereof and of all such extensions of such existence by renewal or otherwise, and shall be binding upon the lessees, assigns, grantees and successors of each during the continuance of their several corporate existences; provided, however, that any party hereto, its successors, grantees or assigns may at any time elect to terminate the term of any lease set out and contained in these articles in which it is lessee, which election shall take effect three years from the date on which written notice of such election shall be delivered to the lessor, its successors, grantees or assigns at its general office; and provided further, that in case any lessee named herein shall elect to terminate any such lease, it shall make compensation to its lessor for damages sustained by such lessor by reason of the acquisition or construction of buildings or additional tracks at the request of such lessee, and if the parties cannot agree upon the amount of such damages, the same shall be determined by referees to be selected as hereinafter provided.

3. If any lessor, its successor, assign or grantee, shall be divested of title to the property leased or

demised by any decree or judgment of any Court made in the enforcement of any mortgage, incumbrance, lien or charge upon said property which shall have priority over this contract, or if any lessor shall execute any mortgage, deed of trust or other conveyance in substitution for or any extension or renewal of any mortgage, lien or charge which shall have priority over this contract, then such sale, decree, mortgage, incumbrance, lien, conveyance or extension shall, at the election of the lessee company declared in writing, operate to release both parties from any obligations thereafter to perform the covenants, promises and agreements in these articles contained; provided, that in case of the renewal or extension of such prior mortgage or lien, such election shall be signified in writing within six months after notice, actual or constructive, of the execution and record of the instrument or instruments by which such extension or renewals shall be made, and shall take effect six months after such notice; and provided further, that in case of the sale of the leased railway in judicial proceeding to any corporation a party to this lease or to a new company created by the reorganization of the lessor company, it shall not operate to give to either party the right to terminate such lease.

SECTION 2.

1. The engines, cars and trains of the lessee, when on a leased railway, shall have all the rights and privileges accorded by the lessor to its own engines, cars and trains when on the same tracks, including the right to use side tracks, telegraph offices and water stations when necessary to the convenient operation of trains; provided, however, that nothing herein shall be so construed as to give to the Pacific Company any right to use tracks and depots at stations between the Cities of South Omaha and Lincoln, or between McPherson and Hutchinson on the railway of the Kansas Company, for receiving and discharging traffic, or to the Rock Island Company the right to use for like purposes the tracks and depots between the Cities of Lincoln and Beatrice.

SECTION 3.

1. The lessor shall maintain and keep in good repair the leased railway and appurtenant property, and shall pay all taxes and assessments which shall be legally laid or levied, whether directly or indirectly, upon the property or upon the gross or net earnings made thereon.

SECTION 4.

1. Rental reserved shall commence to accrue on the day on which the lessee shall take possession of the leased property, not later than the first day of December, 1890, and shall be paid in monthly installments on the fifteenth day of the month following that in or for which it accrues upon the presentation of a statement by the lessor to the lessee showing the amount due, accompanied when required by copies of the pay-rolls and vouchers, showing the expenses incurred certified by the general manager or superintendent of the lessor.

2. When any portion of the expenses incurred in maintaining and repairing the leased line is made a basis for the computation of rental to be paid, such expenses shall include all moneys necessarily and reasonably disbursed for repairing, renewing and maintaining the road-bed, tracks, bridges, stations, buildings, water stations and side-tracks on and along the leased lines.

3. When the salaries of officers and employees form a part of such basis, they shall include reasonable salaries paid to the division superintendents and subordinate employees necessarily engaged in the performance of duties incident to the joint use and occupation of the leased railway.

4. If taxes shall be levied or assessed upon the leased property or gross or net earnings made thereon in such a manner that they cannot be readily or satisfactorily separated from those assessed upon a portion or portions of the same railway, not covered by this lease, they shall be apportioned as equitably as may be; and if the parties cannot agree upon such apportionment, it shall be made by referees as hereinafter provided.

SECTION 5.

1. Schedules of rules and regulations for the movement of engines and trains over the several railways hereby let and demised shall be made for each railway by the duly authorized officers of the lessor and lessee companies by which such railways shall at the time be operated. Such schedules shall, as nearly as may be practicable, accord equality of right, privilege and advantage to trains of the same class operated by the lessor and lessee, and to trains of a superior class operated by either a preference over trains of an inferior class operated by the other. All rules and regulations shall be reasonable and just to both lessor and lessee, and shall secure to neither any preference or discrimination against the other. They shall be executed and all trains moved under the immediate direction of the superintendent or other officer of the

lessor company. If the parties cannot agree upon the adoption of any schedule, rule or regulation, or as to the modification of any one existing, either party may demand a decision of such controversy by referees as hereinafter provided. The referees are hereby invested with power to prescribe schedules, rules and regulations, and to modify existing ones; and in case of willful disregard by either party of the rights of the other, to award damages to the party injured for injuries sustained because of such willful act.

SECTION 6.

1. Any employee of one company engaged in the operation of a railway jointly occupied and used under these articles by such company and another party hereto, shall be removed from the portion of the line so occupied and used upon the request of such other party.

2. If the lessor company shall neglect to comply with any police regulation, or shall permit any tracks, yards, grounds, depots, water stations or other property leased and demised, to be and remain out of proper repair after reasonable notice from the lessee that such compliance or repair is necessary, the lessee may, if such neglect or failure subject it to damages, do such acts and make such expenditures as shall be

ecessary to such compliance or to the making of such pairs at the cost of the lessor.

3. If the lessor company shall be subjected to ny loss, damage, fine or penalty, as the owner of its ilway, because of the failure of the lessee company o comply in the operation of the leased or demised ilway with some police regulation which affects such peration only, the lessee shall indemnify the lessor or all such loss, damages, fines and penalties, with easonable costs incurred in defending against the ame.

4. It shall be the duty of the lessee to give rompt notice to the lessor of any defect, latent or therwise, which may at any time come to the knowl-dge of the lessee, and which, in the opinion of its fficers may cause damage to its trains being operated pon the leased railway; but in no event shall the essee be liable in damages to any one because of a ailure to give such notice. If any defect shall not e remedied within a reasonable time after knowledge f its existence has been communicated by the lessee o the lessor company, it shall be liable to the lessee or any injury which such lessee may sustain because hereof.

5. Each party shall be liable to the other and o all third persons for all injuries and damages

which shall be caused by the misconduct, carelessness or neglect of its own employees, and each shall save the other harmless and indemnify it from all costs, expenses and damages which either shall be called upon to pay by reason of such misconduct, carelessness and neglect of the employees of the other, and in case of collision between the trains of the two parties, the one at fault shall pay all damages, and when neither is at fault or both are in fault, each shall bear its own loss and damage.

Any casualty loss or damage to either party occasioned by the fault or negligence of the train dispatcher, telegraph operator or other employees, whose duties are directly connected with the movement of trains of both parties over the leased line, shall be borne by the party suffering the loss. The party who has the power to employ and discharge an employee shall be liable for all damages resulting from his negligence or incompetency, after notice from the other party that such employee is careless or incompetent.

6. It is expressly understood that neither party to any lease made by any of these articles shall be concluded by any judgment against the other, unless it has had reasonable notice that is required to defend the same or be so bound, and has had reasonable

portunity to make such defense. When such notice
l opportunity have been given, the party notified
ll be concluded by the judgment as to all matters
hich could have been litigated in said suit. Any
her question which may arise as to the obligations,
bilities or duties of the parties, or either of them,
regard to subject-matter of such suit shall be
termined, when the parties are unable to agree, by
ferees, as in these articles provided.

SECTION 7.

1. The lessor may admit any other company op-
ating a connecting railway to the joint possession
d use of the leased railway or any part thereof upon
bstantially the same terms as those set out concern-
g said railway in these articles; Provided, however,
at such additional burden placed upon the said rail-
ay and appurtenant property shall not interfere
th the use of the same by the lessee; and Provided
rther, that the compensation which shall be charged
such additional lessee for such use shall not be less
an that paid by the original lessee, and that such
ntal, other than that based upon maintenance, re-
wals, repairs, taxes and salaries of officers and em-
oyes, shall be divided equally between the parties
reto. The provisions in this paragraph contained

shall not apply to the leased property between and a
Council Bluffs and South Omaha, and between South
Omaha and Lincoln.

SECTION 8.

1. If a lessee shall fail to make the payments of
rental reserved as the same shall become due and pay-
able and such default shall continue for six consecu-
tive calendar months after it is admitted, or a default
adjudged by the referees selected, as in these articles
provided, or by a Court of competent jurisdiction,
then, and in such case, the lease shall, at the election
of the lessor, cease and terminate and become void
thenceforward, and the lessor may enter and take pos-
session of all the leased property as of its first and
former estate.

SECTION 9.

1. Any matter of difference which may arise be-
tween the parties to any contract or lease set out in
these articles, having reference to such contract,
either as to its construction, or any alleged violation
of its provisons, or refusal to perform any duties which
it may be alleged it imposes, or as to any account
claimed to be due under its provisions from one party
to another, or any of the matters herein expressly de-
clared to be proper subjects for reference, which can

not be amicably adjusted, on demand of either party, may be submitted to three disinterested persons, experienced in railway operation, as arbitrators. The party demanding such reference shall give to the other party notice of such demand, stating specifically the question to be submitted for decision, and nominating a person who has the required qualifications to act as one referee. If, at the expiration of ten days from the receipt of said notice the party receiving it has not notified the party demanding the reference, of its nomination of a second referee, having like qualifications, the party making the demand may make such selection. The first and second referees chosen may select a third. When the board is completed the referees shall fix a day and place for the hearing, of which the parties shall be severally notified. If the two referees chosen shall be unable to agree upon a third referee, such third referee may be appointed, upon ten days' notice, on motion of either party, by a judge of the Circuit Court or District Court of the United States for the Districts of Kansas or Nebraska. After hearing testimony and arguments which may be submitted by either party, the referees, if they unanimously agree upon an award, shall state it in writing, which, when delivered to both parties, shall be binding and conclusive upon each, and each party

hereby agrees to be conclusively bound thereby. they cannot unanimously agree, they shall by agreement select two additional referees having qualifications. If the two additional referees can be unanimously agreed upon they may be appoint by the Judge of the Circuit Court or District Court the United States for the Districts of Kansas or braska, and to the board thus constituted shall submitted a statement of the facts as to which th is a unanimous agreement between the first th referees selected, and the testimony pertaining to matter in dispute as to which such referees can agree. The award of a majority of the five refer shall be in writing, and when delivered to the part shall be as final and as conclusive as an award b first chosen referees would have been. If either par shall refuse to keep and perform such award the verse party may enforce the same by apt proceedin in any Court of law or equity, and shall have right upon its own election, expressed in writing, declare this indenture terminated and of no furth effect or obligation, which forfeiture shall take eff one year from the day on which notice thereof served upon the delinquent party.

2. No difference which may arise as to the c struction or performance of any of the covenan

promises and agreements herein contained shall affect, while it remains undetermined, the joint use of the railway to which it relates in the manner in which the parties have theretofore enjoyed such use. It shall continue, and settlements and payments shall be made as before the existence of such disagreement, and when it is finally determined by reference or otherwise, payments and settlements shall be made by the respective parties as may be required by the award of the referees, or provided in the agreement or adjustment, as the case may be.

SECTION 10.

1. If for any reason any of the covenants, promises and agreements in any of these articles expressed, and not material to the right of the lessee to use the property leased and demised, shall be adjudged void, such adjudication shall not affect the validity or obligation of any other covenant, promise or agreement which is in itself valid. In the event of a failure in law of any of the covenants, promises and agreements herein contained, such steps shall be taken and contracts made as shall be advised by counsel to carry into effect the purpose and intent herein expressed.

IN WITNESS WHEREOF, the said parties have severally affixed their names hereto by their respective

presidents, duly authorized, and have impress
hereon their several corporate seals, attested by t
signatures of their respective secretaries, the day a
year first above written.

UNION PACIFIC RAILWAY COMPANY,

(SEAL) By C. F. ADAMS,

President.

ATTEST: ALEX MILLAR,

Secretary.

OMAHA & REPUBLICAN VALLEY RAILWAY COMPANY,

(SEAL) By C. F. ADAMS,

President.

ATTEST: ALEX MILLAR,

Secretary.

SALINA & SOUTH WESTERN RAILWAY COMPANY,

(SEAL) By C. F. ADAMS,

President.

ATTEST: ALEX MILLAR,

Secretary.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

(SEAL) By R. R. CABLE,

President.

ATTEST: J. F. PHILLIPS,

Assistant Secretary.

CHICAGO, KANSAS & NEBRASKA RAILWAY COMPANY,

(SEAL) By M. A. LOW,

President.

ATTEST: C. A. WANNER,

Assistant Secretary.

STATE OF MASSACHUSETTS, }
COUNTY OF SUFFOLK. } ss.

Before me, Frank D. Butrick, a notary public in and for the County of Suffolk, and State of Massachusetts, on this first day of May, in the year one thousand eight hundred and ninety (1890), personally appeared Charles Francis Adams, president of the Union Pacific Railway Company, to me personally known, and also known to me to be such president, and to be the identical person whose signature is affixed to the foregoing instrument as president, and acknowledged the execution of said instrument as his voluntary act, and as the voluntary act and deed of the said Union Pacific Railway Company, for the purposes therein expressed.

In witness whereof, I have hereunto set my hand and notarial seal, the day and year first above written.

FRANK D. BUTRICK,

(SEAL) Notary Public.

STATE OF MASSACHUSETTS, } ss.
COUNTY OF SUFFOLK. }

Before me, Frank D. Butrick, a notary public and for said County of Suffolk, in the State of Massachusetts, on this first day of May, in the year thousand eight hundred and ninety (1890), personally appeared Charles Francis Adams, president of Omaha & Republican Valley Railway Company, to personally known, and also to me known to be president, and to be the identical person whose signature is affixed to the foregoing instrument as president, and acknowledged the execution of said instrument as his voluntary act, and as the voluntary and deed of the said Omaha & Republican Valley Railway Company, for the purposes therein expressed.

In witness whereof I have hereunto set my hand and notarial seal, the day and year above written.

FRANK D. BUTRICK,
Notary Public

(SEAL)

STATE OF MASSACHUSETTS, } ss.
COUNTY OF SUFFOLK. }

Before me, Frank D. Butrick, a notary public and for the County of Suffolk, in the State of Massachusetts, on the first day of May, in the year thousand eight hundred and ninety (1890), personally appeared Charles Francis Adams, President of

Salina & Southwestern Railway Company, to me personally known, and also to me known to be such president, and to be the identical person whose signature is affixed to the foregoing instrument as president and acknowledged the execution of said instrument as his voluntary act, and as the voluntary act and deed of said Salina & Southwestern Railway Company, for the purposes therein expressed.

In witness whereof, I have hereunto set my hand and notarial seal this day and year above writen.

FRANK D. BUTRICK,
Notary Public.

(SEAL)

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Before me, Wm. E. Bent, a notary public in and for the County of Cook, in the State of Illinois, this first day of May, in the year one thousand eight hundred and ninety (1890), personally appeared R. R. Cable, president of the Chicago, Rock Island & Pacific Railway, to me personally known, and also to me known to be such president, and to be the identical person whose signature is affixed to the foregoing instrument as president, and aknowledged the execution of said instrument as his voluntary act, and as the voluntary act and deed of the Chicago, Rock Island

& Pacific Railway Company, for the purposes the
expressed.

In witness whereof, I have hereunto set my h
and notarial seal the day and year above written.

Wm. E. Bent,

(seal) Notary Publi

State of Illinois, } ss.
County of Cook. }

Before me, Wm. E. Bent, a notary public in
for the County of Cook, in the State of Illinois
this first day of May, in the year one thousand e
hundred and ninety (1890), personally appeared
A. Low, president of the Chicago, Kansas & Nebr
Railway Company, to me personally known, an
me known to be such president, and to be the pe
whose signature is affixed to the foregoing instrum
and acknowledged the execution of said instru
as his voluntary act and deed, and as the volun
act and deed of said Chicago, Kansas & Nebr
Railway Company, for the purposes therein expre

In witness whereof I have hereunto set my
and notarial seal the day and year first above wri

Wm. E. Bent,

(seal) Notary Publ

## Complainant's Exhibit No. 5.

ARTICLES OF AGREEMENT made and entered into by and between the Union Pacific Railway Company, a corporation created and existing under and by virtue of the laws of the United States, hereinafter called the Pacific Company, party of the first part, and Chicago Milwaukee & St. Paul Railway Company, a corporation created and existing under and by virtue of the laws of the State of Wisconsin, and a domestic corporation of the State of Nebraska, hereinafter called the St. Paul Company, party of the second part, WITNESSETH:

### ARTICLE 1.

SECTION 1. In consideration of the rentals, charges and agreements herein set forth by said second party well and truly paid, kept and performed, the party of the first part hereby lets the party of the second part into the full, equal, joint possession and use of its main and passing tracks, now located and established, or which may hereafter be located and established, between the terminus of said tracks in the City of Council Bluffs, in the State of Iowa, to a line drawn at a right angle across said tracks within

one and one-half miles southerly of its passenger station at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri River between the City of Council Bluffs and Omaha; connection with the union depot tracks in Omaha; the side or spur track leading from its main track to the lower grade of the Pacific Company's sidings and spur tracks in Omaha, and such extensions as may be hereafter made; and side tracks in Omaha on which to receive from or deliver to the party of the second part freight that may be handled through the warehouses or switched by the party of the first part; the connections with the Union Stock Yards tracks in South Omaha; and conveniently located grounds in South Omaha, on which the party of the second part may construct, maintain and exclusively use a track or tracks, aggregating three thousand feet in length, for the storage of cars and other purposes; for a term of nine hundred and ninety-nine years (999), commencing on the first day of May in the current year; for which possession and use the party of the second part covenants, promises and agrees to pay to the order of the party of the first part, monthly, during the continuance of said term, the sum of three thousand seven hundred and fifty dollars ($3,750), with a proportion of the costs

l expenses, actually incurred during the month for ich such payment is made, in supplying engines n water, and in maintaining and repairing that rtion of said main track jointly used and situated t of the east end of said bridge in the City of uncil Bluffs, and in paying taxes and assessments ally laid and levied thereon, which proportion ll be to the aggregate of the amount so paid as the rtion of the number of wheels per mile operated ring the same month by the party of the second rt over said tracks or any part thereof, shall be to whole number of wheels operated per mile over same tracks during the same period; which sum party of the first part agrees to receive as full mpensation for such possession and use.

SEC. 2. The party of the second part shall have right to make such connections between its own cks and the leased tracks of the party of the first t as shall be necessary or convenient in the oper- on of its own line or lines in connection with such sed tracks, or as may be necessary in conducting business as a common carrier. If the parties not agree as to the location of any of the side cks above mentioned, and the connection thereof h the main track of the party of the first part and h the tracks of the party of the second part, or as

to the line to be established across the main tracks of the party of the first part near South Omaha or as to any connection which shall be made between the tracks of the party of the first part and the party of the second part, or as to the location of grounds upon which the storage track or tracks above mentioned may be constructed, the same shall be determined by referees to be appointed in the manner hereinafter prescribed.

SEC. 3. The party of the first part will when and so long and as often as it may be required so to do by the party of the second part, receive, deliver and store local freight transported to and from Omaha by the party of the second part, in the same manner and with the same promptness and care with which it receives, delivers and stores freights transported by its own cars and trains, for which the party of the second part will pay a reasonable compensation, not exceeding that charged at the same time for like services to any other railway company. If there shall be any differences between the parties as to the manner in which such service is rendered or the compensation to be charged therefor, such differences may be determined by referees in the manner herein prescribed. Nothing herein contained shall be so construed as to prohibit the termination of the arrange-

ent in this paragraph defined upon the election of he party of the second part.

SEC. 4. The party of the first part will secure o the party of the second part the right to use the Union Passenger Station, the erection of which is roposed at the City of Omaha, upon terms in every espect as favorable as those which shall be accorded o any other company which has or may acquire the ight of such use.

SEC. 5. The rental hereinbefore provided for shall ommence to accrue when the party of the second part hall enter into the possession and enjoyment of the ights herein granted, and not later than the 1st day f October, 1890.

## ARTICLE II.

SECTION 1. The party of the first part shall have he care and custody of the premises aforesaid; shall naintain the same, and make all betterments, improvements, repairs, renewals and replacements thereof; and shall, through its train-dispatchers, order and direct the movement of all locomotives, cars and rains on any part thereof, under such rules, regulaions and time schedules as may be from time to time dopted by the duly authorized officers of the parties hereto, and said trains shall be in every respect rated

as the first party's trains of similar class, and shall have equal preference over trains of inferior class belonging to any party occupying said premises.

SEC. 2. It is further mutually understood and agreed that in case of a collision between the engines, cars or trains of the parties hereto while on any of the tracks aforesaid, or in case of any injury to the property of the parties hereto, the party whose employees are in fault shall be responsible for, and shall settle and pay the entire loss and damage caused thereby; and in case such collision or accident is caused by the fault of the employees of both parties, or by one of the joint employees of said parties, then each party shall bear, settle and pay all the loss and damage or injury caused thereby to its own property, or to the property under its control, or to its employees or passengers; and for the purpose of this agreement the first party's train-dispatchers, telegraph operators or other employees, whose duties are directly connected with the movement of the trains of both parties over said leased lines shall be considered the joint employees of both parties hereto. If, however, the party of the second part shall notify the party of the first part that any joint employee is negligent or incompetent, then the party of the first part shall be liable to the party of the second part for all damages

thereafter resulting to its property, employees and to property under its charge, and to its passengers, caused by the negligence or incompetence of such joint employee. If the parties hereto can not agree as to their liability in the case of collision or other casualty as aforesaid, then the matter shall be submitted to arbitrators chosen as hereinafter provided, and the decision of such arbitrators shall be final and binding on the parties hereto.

SEC. 3. The party of the second part, its successors, grantee or assigns may at any time elect to terminate the lease contained in these articles, which election shall take effect three years from the date on which written notice of such election shall be delivered to the party of the first part, its successors, grantee or assigns, at its general office.

SEC. 4. Any matter of difference which may arise between the parties to this contract as to its construction or any violation of its provisions, or refusal to perform any duties that it may be alleged that it imposes or as to any sum claimed to be due under its provisions from one party to the other, or any matters herein expressly declared to be proper subjects for reference, which cannot be amicably adjusted, may, on the demand of either, be submitted to three disinterested persons experienced in railway opera-

tion, as arbitrators. The party demanding such reference shall give to the other party notice of such demand, stating specifically the question to be submitted for decision and naming a person, who has the required qualifications, to act as one referee. If, at the expiration of ten days from the receipt of said notice the party receiving it has not notified the party demanding the reference of its nomination of its second referee having like qualification, the party making the demand may make such selection. The first and second referee shall select the third. When the board is completed the referees shall fix a day and place for the hearing, of which the parties shall be severally notified. If the two referees chosen shall be unable to agree upon the third referee, such referee may be appointed upon ten days' notice, on motion of either party, by a Judge of the Circuit or District Court of the United States for the District of Nebraska. After hearing the testimony and arguments which may be submitted by either party, the referees if they unanimously agree upon the award, shall state it in writing, which when delivered to both parties, shall be binding and conclusive upon each, and each party hereby agrees to be conclusively bound thereby. If they cannot unanimously agree they shall by like agreement select two additional

referees having like qualifications; of the two additional referees cannot be unanimously agreed upon, they may be appointed by a Judge of the Circuit or District Court of the United States for the District of Nebraska, and to the board thus constituted shall be submitted a statement of the facts as to which there is a unanimous agreement between the first three referees selected as above, and all the testimony pertaining to the matters in dispute, as to which said referees cannot agree. The award of the majority of the five referees shall be in writing and when delivered to the parties shall be as final and conclusive as the award by the first chosen referees would have been. If either party refuses to keep and perform such award the adverse party may enforce the same by appropriate proceeding in any Court of law or equity and shall have the right upon its own election, expressed in writing, to declare this indenture terminated and of no further effect or obligation, which termination shall take effect one year from date on which notice thereof is served on the delinquent party.

SEC. 5. No difference which may arise as to the construction or performance of any of the covenants, promises and agreements herein contained, shall effect while it remains undetermined, the joint use of the

as

railroad tracks in the manner in which the pa
have theretofore enjoyed their use; it shall conti
and settlements and payments shall be made as be
the existence of such disagreement; and when
finally determined by reference or otherwise paym
and settlements shall be made by the respec
parties as may be required by the award of the
erees; or as provided in the agreement or adjustm
as the case may be.

IN TESTIMONY WHEREOF the parties hereto h
each, by the authority of their respective bo
of directors, hereto subscribed their corporate na
by their respective presidents and affixed hereto t
respective corporate seals, attested by their respec
secretaries, this.....day of.....
the year of our Lord one thousand eight hundred
ninety.

UNION PACIFIC RAILWAY COMPANY,

By.....

ATTEST: Presiden

.....

Secretary.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPA

By..... .....

ATTEST: Presiden

..... .....

Secretary.

STATE OF MASSACHUSETTS, COUNTY OF SUFFOLK. } ss.

Be it remembered that on this..... day of.....A. D., 1890, before me, the undersigned, a notary public within and for Suffolk County, personally appeared Charles Francis Adams, president of The Union Pacific Railway Company, to me personally known to be such president, and to be the same person who executed the foregoing instrument, for and on behalf of said company, and duly acknowledged the same to be his free act and deed, as such president, and the free act and deed of said company, for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and affixed my notarial seal at my office in said county and state, the day and year above written.

.....

Notary Public.

STATE OF WISCONSIN, COUNTY OF MILWAUKEE. } ss.

Be it remembered, that on this..... day of.....A. D., 1890, before me, the undersigned, a notary public within and for Milwaukee County, personally appeared Roswell Miller, president of The Chicago, Milwaukee & St.

Paul Railway Company, to me personally known
be such president, and to be the same person who
ecuted the foregoing instrument, for and on behalf
said company, and duly acknowledged the same to
his free act and deed, as such president, and the f
act and deed of said company, for the uses and p
poses therein expressed.

In witness whereof I have hereunto set my ha
and affixed my notarial seal at my office, in the C
and County of Milwaukee and State of Wisconsin,
day and year above written.

.....

Notary Public

## Complainant's Exhibit No. 6.

THIS AGREEMENT, made and entered into this ..... day of September, A. D. 1898, between Union Pacific Railroad Company, a corporation duly organized under the laws of the State of Utah, hereinafter called the Pacific Company, party of the first part, the Chicago & North-Western Railway Company, a corporation existing under the laws of the States of Illinois, Wisconsin and Michigan, party of the second part, the Chicago, Rock Island & Pacific Railway Company, a corporation existing under the laws of the States of Illinois and Iowa, party of the third part, and the Chicago, Milwaukee & St. Paul Railway Company, a corporation existing under the laws of the State of Wisconsin, party of the fourth part, WITNESSETH:

THAT WHEREAS, the said Pacific Company is about to construct a general passenger depot, with suitable appurtenances, facilities and accommodations in the City of Omaha, Nebraska, upon lands owned by said Pacific Company, and described as follows:

Commencing at a point in the east line of 10th street, at its intersection with the north line of the alley in Block 204, being also the southwest corner of

Lot 4, in said Block 204; thence south 100 feet alo
the said east line of 10th street; thence west 100 f
to a point in the west line of 10th street 52 feet no
from the north line of Marcy street; thence south
feet along said west line of 10th street and the ext
sion of same to a point 17 feet south from the no
line of Marcy street; thence west 678 feet 17 feet sou
from and parallel with said north line of Marcy str
to a point in the center of 12th street; thence sou
along the center line of 12th street 34 feet to a poi
half way between the center lines of the most sout
erly track of the Union Pacific Railroad Compa
and the most northerly track of the Burlington
Missouri River Railroad, as now existing; thence ea
erly, half way between and parallel with the cen
lines of said tracks, 100 feet; thence in a straight li
south-easterly about 686 feet to a point in the e
line of 10th street 67 feet north from the north li
of the alley in Block 219; thence east 950 feet 67 fe
from and parallel with the north line of alleys
Blocks 219, 218 and 217; thence south-easterly 344
feet to a point in the west line of Lot 1, in Block 21
120 feet south from the north-west corner of sam
thence north along the west line of said Lot 1, 48 fee
thence north-westerly 449.2 feet to a point 42 fe
south from the north line of Marcy street; thence nor

42 feet to a point in the north line of Marcy street; thence west along the north line of Marcy street 140 feet; thence north-westerly 96.2 feet to a point in the west line of 8th street 104 feet south from the south line of the alley in Block 205; thence north along said west line of 8th street 104 feet to the south line of alley in said Block 205; thence west 264 feet along the south line of alley in Block 205 to the east line of 9th street; thence south along the east line of 9th street 20 feet; thence north-westerly 133.2 feet to a point in the north line of the alley in Block 204; thence west 237 feet along the north line of alley in Block 204 to the east line of 10th street, being the point of commencement. Containing 340,000 square feet of ground, more or less; a map of said lands showing the ground plan of said general passenger depot, track and appurtenances being hereto attached and marked Exhibit "A;" and

WHEREAS, the second, third and fourth parties wish to acquire the right to use said general passenger depot and the tracks, facilities and appurtenances connected therewith, jointly with the said Pacific Company, and with such other company or companies as may hereafter, under the provisions of this agreement, be admitted by the party of the first part to the joint use of said passenger depot, facilities and appurten-

ances, and the Pacific Company is willing to grant a right to such joint use to said second, third and fourth parties, upon the terms and conditions, and for the consideration hereinafter mentioned.

Now, Therefore, in consideration of the premises and of the promises, covenants and agreements hereinafter contained, it is covenanted and agreed between the parties hereto, as follows:

## ARTICLE I.

The Pacific Company shall, as soon as practicable, begin and within eighteen months from the date hereof complete the construction of said general passenger depot, also the tracks and other appurtenances to said depot (the estimated cost of which is three hundred thousand dollars), substantially according to the plan hereto attached.

## ARTICLE II.

The Pacific Company hereby grants and conveys to the second, third and fourth parties, their successors and assigns, the right to jointly use with said Pacific Company said general passenger depot, also said tracks and other appurtenances, when the same shall be completed, during the entire period of fifty years from the first day of July, A. D. 1899, subject

ways, however, to the strict performance by the sec-
d, third and fourth parties respectively of all the
ligations herein stipulated to be by them severally
rformed.

Provided, however, that nothing in this agree-
nt contained shall be construed in any manner to
ect or abridge any of the rights, powers or corpor-
franchises of said Pacific Company, or as an
andonment of its ownership or occupancy of the
emises occupied by said station and appurtenances.

## ARTICLE III.

The Pacific Company shall be charged with the
ty of insuring said depot, and of repairing, renew-
and maintaining said depot, tracks and appurten-
ces; also of paying all premiums of insurance and
taxes and assessments which may be lawfully levied
assessed upon said depot, tracks and appurtenances,
upon the land whereon the same may be con-
ucted, or upon any part of either of them, and of
oviding said passenger depot and other buildings
th heat, light and all the usual supplies, furniture
d appurtenances required for the convenient and
nomical use thereof. The Pacific Company shall
rnish to the other parties using said depot state-
nts monthly, as hereinafter provided, of all pay-

ments made by it on account of items named in this article.

## ARTICLE IV.

In consideration of the construction of said general passenger depot and appurtenances, and the provisions made for the accommodation therein of the second, third and fourth parties, and of the rights and privileges herein granted to said parties, said second, third and fourth parties each accept the grant and transfer of a right to use the same (in common) and covenant and agree that they will each continue to use the same upon the terms and conditions herein named, for the full period above specified; and that for the right to use said general passenger depot tracks and appurtenances jointly with said Pacific Company as herein provided, said second, third and fourth parties will each pay to said Pacific Company a fixed annual compensation, which compensation so to be paid by each party shall amount to *one-fourth* the interest at five per centum per annum on a sum to be made up of the value of said entire tract of land on which said depot, tracks and appurtenances are to be constructed, and the total cost of said depot, tracks and appurtenances substantially according to the annexed plan, which amounts, so to be paid by said second, third and fourth parties respectively, shall be

aid to the Treasurer of the Pacific Company in law-
ul money of the United States of America in twelve
qual monthly payments on the 20th day of each month
n every year of the term aforesaid.

The fixed compensation stipulated for in this
Article shall begin to accrue from the date of the com-
letion of said passenger depot ready for occupancy
y the parties hereto. The interest at the rate of five
er centum per annum on payments made by said
Pacific Company during the construction of said depot
nd appurtenances shall be calculated to the time of
ccupation of said depot as aforesaid and be added to
he cost of same. The cost of any permanent im-
provement or structure, made in pursuance of the
erms of any ordinance or regulation of public
uthority, shall in like manner be added to the
mount upon which fixed compensation is made.

It is agreed that the value of the land to be oc-
upied and used as aforesaid is three hundred and
orty thousand dollars ($340,000), and for the purpose
f fixing definitely and finally the amount of said an-
ual compensation and the monthly payments there-
f, on the basis above named, the first, second, third
nd fourth parties shall, after the final completion of
he depot, tracks and appurtenances as aforesaid, and
hen the entire cost thereof shall be known, unite in

a written certificate of the value of said land as herein stated and of the cost of said depot and appurtenances as the same shall be certified by the Chief Engineer of said Pacific Company, also of the amount of said annual rental and of said monthly payments; said certificate to be signed by each of the parties and appended to this agreement.

## ARTICLE V.

In addition to the regular fixed compensation payable under the terms of Article IV, the second, third and fourth parties shall each pay to the Pacific Company its proportion of the expense of repairing, renewing, maintaining and operating said depot, tracks and appurtenaces, including herein the salaries of the depot master and assistants, all ticket and baggage agents, watchmen and employes of every kind; including also premiums of insurance, taxes and assessments, general or special, as well on the lands to be occupied by said depot, tracks and appurtenances as upon said improvements thereon; including also claims for damages to persons or property caused by the employes, paid in common and apportioned as hereinafter provided, and such sums as may from time to time be expended in compliance with the terms of any ordinance or regulation of public authorities al

fecting the operation of said depot; which proportion so to be paid by the second, third and fourth parties respectively shall be determined by the ratio which the number of engines and passenger, baggage, mail and express or other cars in passenger trains of each of said parties arriving at and departing from said depot bears to the whole number of such engines and cars arriving at and departing from said depot. For the purpose of determining the number of such engines and cars, the trains and cars arriving at and departing from said station shall be divided into three classes, as follows:

First. In all trains arriving at or departing from said passenger station and running only between Council Bluffs and Omaha or only between Council Bluffs and South Omaha, each locomotive shall be counted as two cars and each car as one car.

Second. In all trains passing through said station in either direction and running only between points east of Council Bluffs and Omaha or South Omaha, or running only between points west of South Omaha and Omaha or Council Bluffs, each locomotive shall be counted as six cars and each car as three cars.

Third. In all trains passing through said station and running in either direction between points

east of Council Bluffs and points west of South Omaha, each locomotive shall be counted as six cars and each car as three cars arriving, and as six cars and three cars, respectively, departing.

It is mutually understood that when cars in any train of any of the parties hereto shall arrive at Council Bluffs or Omaha from points east of Council Bluffs and shall at either Council Bluffs or Omaha respectively be made up in a train for points west of South Omaha, said train of cars shall be considered to come within the third class above defined; and in like manner, when cars in any train of any of the parties hereto shall arrive at Omaha or Council Bluffs from points west of South Omaha, and shall either at Omaha or Council Bluffs respectively be made up in a train for points east of Council Bluffs, said train of cars shall also be considered to come within the said third class.

And it is further understood that no charge shall be made on trains or cars taken from said depot to the yards of the parties hereto in Omaha, South Omaha, Council Bluffs, or vicinity, after discharging their loads, nor on any trains or cars delivered from said yards to said depot to receive their loads. And the several parties hereto mutually covenant and agree that they will each make use of said passenger

depot during the period herein contemplated in respect to all passenger trains arriving at, departing from or passing through Omaha on their respective lines of railway.

The Pacific Company shall render statements of all payments made by it each month on account of the various items named in this article, on or before the twentieth day of each succeeding month, and the second, third and fourth parties shall each pay monthly their several proportions of said amounts, computed on the basis aforesaid, in lawful money of the United States, to the Treasurer of the Pacific Company within ten days after the receipt of the statements aforesaid. It being mutually agreed that all revenues received from the rent of rooms or privileges in said passenger depot shall be applied in reduction of the joint expense of maintaining and operating said depot, and the balance, if any remains, shall be applied in reduction of the fixed compensation in the proportion paid by each party hereto. One or more of the parties hereto making use of any part of said passenger depot, facilities or appurtenances, not likewise used in common by all the other parties, shall pay a reasonable compensation for such special use. Each party hereto shall itself pay for any switching or other services it may require in the handling of its

trains or otherwise for its own benefit in the e
ment of said facilities, if such services are no
quired for the common use and benefit of al
parties.

ARTICLE VI.

The Pacific Company shall appoint a depot
ter, who shall have charge of said passenger d
and appurtenances, the employes engaged therei
the movement of all locomotives, cars, and train
said depot grounds. It shall also appoint such
employes as may be required in the operation of
passenger station. Said Pacific Company shall
appoint, with the concurrence of a majority o
parties using said depot, a general ticket agent a
general baggage agent, and the necessary assis
thereto, who shall sell all the tickets and handl
the baggage at said passenger station. Said t
and baggage agents, and all other employes of
passenger station authorized to receive or dis
moneys in the operation thereof, shall execute b
with reasonable sureties, to the Pacific Company,
with suitable conditions to protect the parties
said depot. In case any deficiency becomes kn
proceed to apportion such deficiencies betwee
several parties using said depot, on the basis o
ticket sales of each party from the time the acc

of such agents were last checked in the interest of said parties. Each party shall promptly pay to the Pacific Company, and the Pacific Company shall promptly disburse to the parties entitled to receive the same, the proportion of such deficiency due from each party, calculated on the basis aforesaid. Said Pacific Company shall also, without delay, prosecute the bond given by said agents or employes, and any money that may be recovered thereon, less the expenses of collecting the same, shall be divided among the parties using said depot in the proportion that they shall have contributed to pay the loss growing out of said dificiency. Any person appointed, as provided for in this Article, shall be removed, on the request in writing, of the General Manager of any of the parties hereto. The train employes of each party shall be subject to the control of said depot master in respect to the movement of their trains when the same are within the limits of said passenger depot grounds. Ticket agents shall require passengers to designate the route they wish to take, and shall ticket them strictly in accordance with such designation.

## ARTICLE VII.

Each party shall be responsible for loss or damage to persons or property which may arise out of the

conduct or neglect of its own employes; claim
loss or damage to persons or property, including
erty used in common at said depot, arising out o
conduct or neglect of employes paid in common,
be adjusted by the said first party, and all mone
paid by it shall be charged to the current accou
expenses of operating and maintaining said depo
paid as provided in Article V.

The Pacific Company shall not be chargeabl
any damage to persons or property because o
relation of master in respect to the operation of
depot. The several railway companies, each for it
hereby agrees to save and keep harmless the P
Company, and each of the other parties hereto,
payment of any damages, costs or expenses gro
out of any claim for damages or otherwise, for w
such railway company, under the terms of this
tion, is liable or chargeable.

## ARTICLE VIII.

To insure harmony between the parties here
the conduct of business at said passenger station
ing the term hereby created, and to fully provid
impartial treatment of the passenger traffic of
of the parties hereto, it is mutually agreed: T
Board of Managers shall be created, to consist o

General Managers for the time being of each of the parties hereto. Said board shall have power, by the vote of not less than three-fourths of its members, to make or amend rules respecting the entry and departure of passenger trains, the handling thereof upon the station grounds, the operation and care of all property used in common on said premises, the conduct of employees engaged in service at said station, and the general rules for the carrying on of the passenger, baggage, mail and express business in all its branches at said station, which rules shall be enforced and observed by said Pacific Company in its operation and management of said station, and when so prescribed shall be deemed the rules of said Pacific Company and of each of said railway companies.

The Board of Managers from time to time may determine by a like vote the additional facilities that may be required on said premises for the joint use and accommodation of the parties hereto, and of such other railway companies as may be permitted to participate therein; and said Pacific Company agrees to promptly provide the same. The cost of such additional facilities shall be added to and become a part of the capital account upon which the annual interest charge hereinbefore provided shall be based and computed.

## ARTICLE IX.

In case the said depot shall be destroyed by fire or other causes, or rendered untenantable by any cause, the same shall be repaired, rebuilt or replaced under direction of the first party without unreasonable delay, and during the time required therefor it will permit the second, third and fourth parties to use jointly with it such other buildings as it may provide for the transaction of its own passenger business, and during such use the fixed compensation that shall be paid by each of the said parties hereto shall be as provided in Article IV hereof, together with five per centum per annum on the value of the buildings and appurtenances thus temporarily provided. The first party shall, during the period of repairs or reconstruction, divide equally with the second, third and fourth parties the interest received by it on any insurance money collected on the damaged premises.

## ARTICLE X.

If any party entitled to the use of said depot shall at any time make default in the payment of any or either of the amounts herein provided by it to be paid, and such default shall continue for the space of thirty days after such payment shall have

become due, then and in that event the Pacific Company shall either terminate this agreement as to such defaulting company or proceed to enforce against such defaulting company its obligations hereunder, or both, as shall be directed by a three-fourths vote of the Board of Managers. In the event that this agreement shall be terminated as to such defaulting company, all the rights of such party in default to the use and enjoyment of any of the premises herein named, whether by virtue of this agreement or otherwise, shall at once cease and determine; and such defaulting party shall and will surrender and yield up undisturbed and peaceable possession of said depot, tracks and appurtenances; and in the event of either of said parties being in default as aforesaid, it is agreed that each party hereto remaining in possession with said Pacific Company will pay the Pacific Company such proportion of the sums then due from such defaulting company, as fixed compensation hereunder, as each company bears to the whole number of companies continuing to occupy said depot and premises, and will pay such proportion of the amount due from said defaulting company, on account of Operating Expenses, as its own cars and engines using said station bears to the whole number of cars and engines of the companies using said station, during each month

of said default; and from and after such default, each shall pay as fixed compensation such proportion of the interest at five per centum per annum on said sum made up of the value of land and cost of depot, tracks, and appurtenances as aforesaid as each company shall bear to the whole number of companies continuing to occupy said depot and premises, and will also further pay such proportion of the expense of operating and maintaining said depot and appurtenances as the business done by such party or parties shall bear to the total business done at said depot, computed on the basis provided in Article V.

In the event that the obligations hereunder of such defaulting company shall be enforced by legal proceedings, the Pacific Company shall conduct and vigorously prosecute the same, and all costs and expenses thereby incurred over and above the amount recovered, together with the deficiency, if any, in the fixed compensation due from such defaulting parties shall be borne equally by the remaining parties hereto any deficiency in the sums due from such defaulting parties on account of the expenses of maintenance and operation of said depot shall be borne by the remaining parties hereto in the proportion in which such remaining parties were chargeable with such expense of operation and maintenance during the period for

which such default shall have accrued. And in like manner all sums recovered from such defaulting company over and above the costs and expenses of collecting the same shall be credited to the remaining companies in the same proportion.

## ARTICLE XI.

None of said railway companies, parties of the second, third and fourth parts, shall sell, assign, underlet or transfer this grant or license, or any part thereof, or any interest therein, to any other company, nor contract or arrange with any other road or roads for an entrance to said depot. But this shall not prevent any party hereto from hauling in its own trains cars of other companies with which it shall have agreements for through service, provided the effect of so doing shall not be to give other companies than parties hereto the use of the depot facilities herein provided for.

In case two or more companies, grantees of the depot privileges herein provided, shall become incorporated into one system by consolidation, lease or otherwise, the fixed compensation to be paid by said consolidated company to the Pacific Company on the capital account shall equal the fixed compensation agreed to be paid by both or all of said several com-

panies before they were united into one system, and nothing herein shall in any manner be construed at any time to decrease the aggregate fixed compensation as hereinbefore provided.

## ARTICLE XII.

Each of the parties hereto shall make to the other party prompt reports in writing of all claims made upon it by its employes or other parties for damages arising from accidents or otherwise, for the payment of which—in whole or in part—any party hereto may be liable under this agreement.

## ARTICLE XIII.

When by the terms of this agreement the service of any statement or notice is required to be made by any party hereto upon any other party hereto, it shall be deemed a full compliance with such requirement if such service is made on the President, or General Manager for the time being of the party on which such service is to be made. If the service cannot be made upon the President or General Manager, it may be made upon any other officer of such party.

## ARTICLE XIV.

It is agreed that the following named companies shall be admitted to a joint use of said depot and appurtenances, in case they or either of them shall so desire, and shall become a party to this agreement by subscribing to the copy of the same which shall be in the possession of each of the parties hereto:

Missouri Pacific Railway Company; Fremont, Elkhorn & Missouri Valley Railroad Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Illinois Central Railroad Company; The Wabash Railroad Company, and the Omaha & St. Louis Railroad Company; also, that any other railroad companies, by and with the consent of the party of the first part and upon like subscription to the copy of this agreement in the possession of the parties hereto as aforesaid, shall be admitted into said depot. In case of the admission of any Company or Companies as herein provided, the basis of fixed compensation shall be changed so that the same shall be borne equally by all the Companies using said depot; and the cost of operation and maintenance shall be borne on the basis hereinbefore provided. It being also understood that in the event of admission of any Company as a party to this agreement as herein provided,

the duties and privileges of such Company shall
precisely as are herein defined in respect to the se
ond, third and fourth parties.

## ARTICLE XV.

The books, files and accounts of the said Paci
Company pertaining to the operation of said passe
ger station facilities shall at all times be open to i
spection of the superintendent and general managi
agent of each of the railway companies, parties here
or such officer or agent as it may appoint to insp
the same.

## ARTICLE XVI.

In case the said Pacific Company shall fail, n
lect or refuse to perform any of its agreements her
set forth, and said failure, neglect or refusal sh
continue for a period of three months after writ
demand for performance shall have been made upon
then and in that case any of the parties hereto m
terminate this agreement upon ten days' written
tice signed by the General Manager of such pa
and thereupon said company may retire from the
of said depot and facilities and shall cease to be bou
by this agreement or any of its provisions, and m
sue for and collect from said Pacific Company

and all damage it may sustain by reason of such failure, neglect or refusal of said Pacific Company.

## ARTICLE XVII.

If at any time a difference of opinion shall arise in respect to the rights or duties of either party under this agreement, or under the rules which may be adopted by the Board of Managers for the government of joint employes, the question in dispute shall be referred to a Board of Arbitrators, consisting of three competent disinterested persons, one of whom shall be chosen by each party to the dispute, and the two so chosen shall select a third. The party desiring such arbitration shall give written notice of the same to each of the parties to this agreement, setting forth therein definitely the point or points in dispute, and shall name the person selected by such party to act as arbitrator.

If any party served with such notice shall not, within fifteen days after such service, name a second disinterested person to act as arbitrator, the party serving such notice may select the second, and the two thus chosen shall select a third.

The Board of Arbitrators thus chosen shall proceed at once to hear, consider and determine the matter submitted to them; and shall give to each of the

parties to such matter of difference notice, whic
shall not be less than ten days, of the time and pla
of hearing, and at the time and place appointed sha
proceed with the hearing, unless for good cause, o
which the arbitrators shall be the judges, it shall b
postponed to some later day. And the determinatio
of the Board of Arbitrators thus constituted, or of a m
jority of the persons composing the same, to be mad
in writing, and a copy thereof to be delivered to eac
of the parties, shall be final and conclusive upon th
parties in reference to all matters thus submitted.

The above provisions respecting arbitration sha
not be the sole remedy of any of the parties hereto
but either party may resort to any other legal o
equitable remedy.

The existence of a controversy as to the constru
tion or validity of any covenant or agreement here
shall not delay or effect the performance of any oth
covenant or agreement.

The arbitrators herein provided for may, in the
final judgment, apportion the cost or expense of arb
tration between the parties to the controversy,
award the payment of such costs and expenses as m
seem to them just.

Pending the decision of arbitrators, the busine
settlements or payments affected by such controve

shall be transacted and made in the manner and form existing prior to the raising of such question by any party claiming relief.

IN WITNESS WHEREOF, said parties have severally affixed their names by their respective Presidents duly authorized, and have impressed hereon their several corporate seals, attested by the signatures of their respective Secretaries, the day and year first above written.

UNION PACIFIC RAILROAD COMPANY,

By.....

ATTEST: President.

.....

Secretary.

CHICAGO & NORTH-WESTERN RAILWAY COMPANY,

By.....

ATTEST: President.

.....

Secretary.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,

By.....

ATTEST: President.

.....

Secretary.

CHICAGO, MILWAUKEE & ST. PAUL RAI
COMPANY,

By.....
Presid

ATTEST:

.....
Secretary.

MISSOURI PACIFIC RAILWAY COMPANY,

By.....
Presid

ATTEST:

.....
Secretary.

FREMONT, ELKHORN & MISSOURI VALLEY
ROAD COMPANY,

By.....
Presid

ATTEST:

.....
Secretary.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAI
COMPANY,

By.....
Presid

ATTEST:

.....
Secretary.

ILLINOIS CENTRAL RAILROAD COMPANY,

By..... .....

President.

ATTEST:

.....

Secretary.

THE WABASH RAILROAD COMPANY,

By.....

President.

ATTEST:

.....

Secretary.

OMAHA & ST. LOUIS RAILROAD COMPANY,

By.....

President.

ATTEST:

.....

Secretary.

## Complainant's Exhibit No. 7.

THIS AGREEMENT, Made and entered into, this 1st day of August, 1899, by and between Union Pacific Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Utah, hereinafter called the "Pacific Company," party of the first part; the Chicago & North-western Railway Company, a corporation created and existing under and by virtue of the laws of the States of Illinois, Wisconsin and Michigan, party of the second part; the Chicago, Rock Island & Pacific Railway Company, a corporation created and existing under and by virtue of the laws of the States of Illinois and Iowa, party of the third part; and the Chicago, Milwaukee & St. Paul Railway Company, a corporation created and existing under and by virtue of the laws of the State of Wisconsin, party of the fourth part, WITNESSETH:

WHEREAS, all the parties hereto made and entered into a certain agreement, bearing date September 1st, 1898, relating and pertaining to, and concering the erection and operation of a passenger station, at Omaha, Nebraska, which said passenger station was to be erected upon certain lands, properties and premises owned by the Pacific Company; a full and com-

plete description of said lands, properties and prem-
ises, by metes and bounds, was set forth in said agree-
ment, and also shown by a map thereto attached and
marked Exhibit "A;" and

WHEREAS, it has since been found necessary to use
and occupy certain other and additional grounds and
premises of said Pacific Company for the purpose of
building and operating said passenger station;

NOW THEREFORE, for good and valuable consider-
ations moving between and to each of the parties
hereto, it has been agreed, and it is herein and hereby
agreed, by and between all of the parties hereto, that
the description of said grounds, properties and prem-
ises, as contained in said agreement, dated September
1st, 1898, and also shown on the map thereto attached,
marked Exhibit "A," shall be and is, hereby changed
and amended by the substitution of the following de-
scription of properties, grounds and premises, and by
the substitution of the annexed map, marked Exhibit
"B," said description and said map to be taken in
lieu of, and stand in the place of the description of
said properties, grounds and premises contained in
said original agreement above referred to, and in lieu
of and stand in the place of said map Exhibit "A"
hereto attached. Said properties, grounds and prem-
ises are described as follows, to-wit:

Commencing at a point in the West line of 9
Street at its intersection with the South line of t
alley in Block 205; thence West along said South li
of alley and extensions of same 326.8 feet; then
Northwesterly 39 feet to a point in the West line
9th Street 140.2 feet South from the South line
Leavenworth Street; thence North 65.2 feet along s
West line of 9th Street to a point 75 feet South fr
the South line of Leavenworth Street; thence We
274 feet, 75 feet from and parallel with the Sou
line of Leavenworth Street; thence South 157 fe
90 feet from and parallel with the West line
10th Street; thence West 90 feet to a point in t
West line of 10th Street, 80 feet South from the Sou
line of the alley in Block 203; thence South 18 fe
along said West line of 10th Street; thence West 7
feet parallel with the South line of Leavenwor
Street to a point in the West line of 12th Street,
feet North of the North line of Marcy Street; then
South along said West line of 12th Street and t
extension of same 49 feet; thence East 132 f
parallel with the South line of Leavenworth Stre
thence Southeasterly 130 feet on a curve with a radi
of 359 feet; thence Southeasterly 229 feet on a li
tangent to the last described curve; thence Easte
346.4 feet on a curve with a radius of 955 feet t

point 50 feet North from the North line of the alley in Block 220, extended; thence East 983 feet on a line tangent to last above described curve and parallel with the South line of Leavenworth Street; thence Southeasterly 827 feet to a point in the West line of Lot 1, in Block 216, 126 feet South from the Northwest corner of same; thence North along the West line of said Lot 1, 54 feet to a point 72 feet South from the Northwest corner of said Lot 1; thence Northwesterly 595.3 feet to a point in the North line of Marcy Street extended; which point is 8 feet West from East line of 8th Street extended South; thence Northwesterly 111.3 feet to a point in the West line of 8th Street extended South, 70 feet South from its intersection with the South line of the alley in Block 205; thence North 70 feet along said West line of 8th Street to the point of commencement, containing 411,000 square feet of ground more or less. A map of said grounds, tracks and appurtenances being hereto attached and made a part hereof, marked Exhibit "B."

It is further mutually understood and agreed by all parties hereto, that all the terms and conditions of said original agreement dated September 1st, 1898, shall apply and refer to the description of lands shown herein, and by said map marked Exhibit "B,"

hereto attached, and as fully and completely as if sai
changed and amended description had been originall
inserted in said agreement dated September 1st, 189

It is further mutually understood and agreed tha
the valuation of the lands, properties and premises t
be occupied and used as provided in said origina
agreement, is hereby and herein fixed at the sum o
Four Hundred and Eleven Thousand Dollars ($411,
000), instead and in lieu of the sum of Three Hun
dred and Forty Thousand Dollars ($340,000) as speci
fied and designated in said original agreement, date
September 1st, 1898.

It is further mutually understood and agreed tha
all Companies which may hereafter be admitted t
said passenger station by said Pacific Company, shal
adopt, approve, confirm, consent, and agree to the
modifications and changes in the terms and condition
of said original agreement as herein specified and de
ignated.

It is further mutually understood and agreed tha
all other terms and conditions of said original agree
ment of September 1st, 1898, are to remain unaffected
unchanged, and unmodified, and are to continue and
remain in full force and effect, and that this agree
ment is only to affect and change the description o
the properties, grounds and premises as in said orig

inal agreement contained, and for the purpose of re-stating and refixing the valuation of the grounds, lands and premises as herein specified and designated.

IN WITNESS WHEREOF, said parties have severally affixed their names by their respective Presidents duly authorized, and have impressed hereon their several corporate seals, attested by the signatures of their respective Secretaries, the day and year first above written.

UNION PACIFIC RAILROAD COMPANY,

By.....

ATTEST: President.

.....

Secretary.

CHICAGO & NORTH-WESTERN RAILWAY COMPANY,

By.....

ATTEST: President.

.....

Secretary.

THE MISSOURI PACIFIC RAILWAY COMPANY,

By.....

ATTEST: President.

.....

Secretary.

FREMONT, ELKHORN & MISSOURI VALLEY RAILROAD COMPANY,

By.....

ATTEST: President.

.....

Secretary.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY,

By.....

ATTEST: President.

.....

Secretary.

ILLINOIS CENTRAL RAILROAD COMPANY,

By.....

ATTEST: President.

.....

Secretary.

THE WABASH RAILROAD COMPANY,

By.....

ATTEST: President.

.....

Secretary.

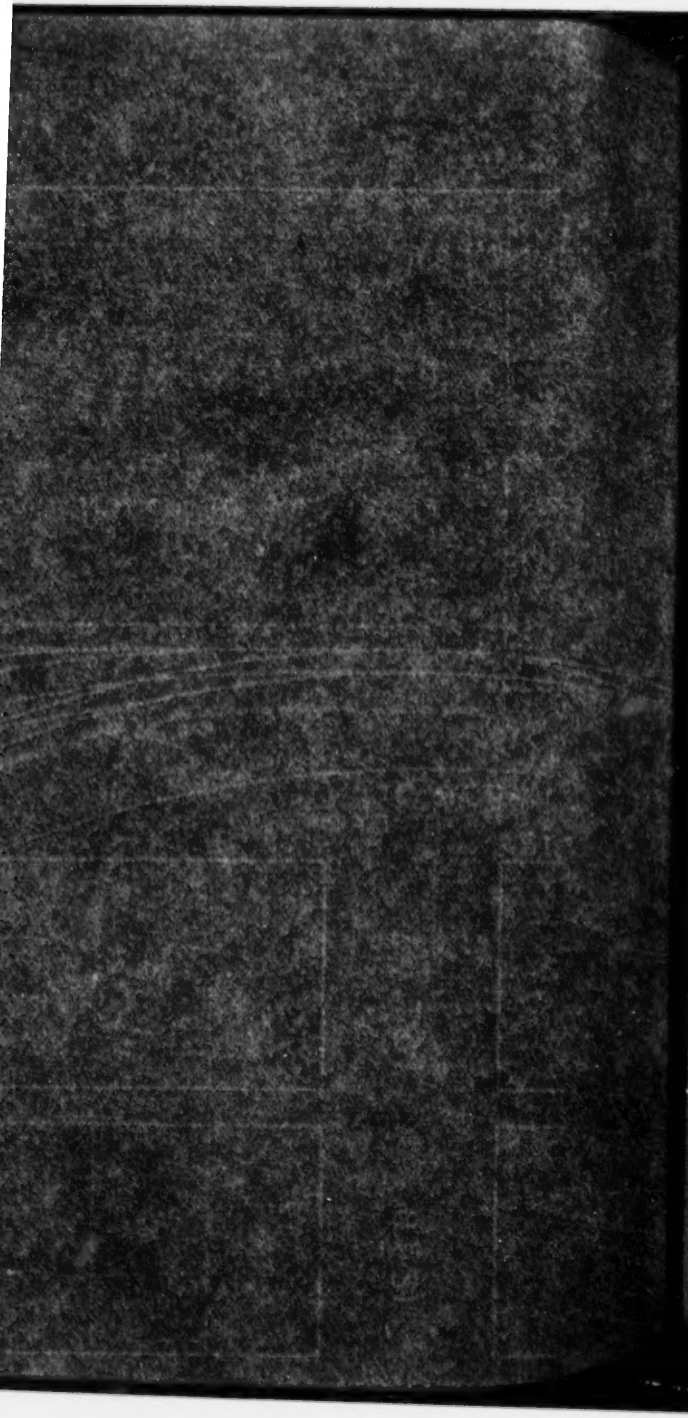
OMAHA & ST. LOUIS RAILROAD COMPANY,

By.....

ATTEST: President.

.....

Secretary.



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Answer

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# United States Circuit Court
## THE DISTRICT OF NEBRASKA.

TY & FORT DODGE RAILROAD
Y,
*Complainant,*
AGAINST
CIFIC RAILROAD COMPANY,
*Defendant.*

**Union Pacific Railroad Company to Amended Bill of Complaint.**

endant, saving and reserving to itself all benefit or advantage of exception, or that may be had or taken to the many ertainties and imperfections in said bill for answer thereto, or to so much thereof ndant is advised it is material or necessary endant to make answer thereto, answering llows:

that complainant is a corporation created ed under and by virtue of the laws of the va, and that complainant owns a line of eading from Manley Junction, in the va, to Fort Dodge, in the State of Iowa, arion, Iowa, to Hampton, Iowa, and that complainant's railroad connect with the

lines of the Chicago Great Western Railway Company at Manley Junction, Iowa, and at Hampton, Iowa.

It further admits that the lines of the Chicago Great Western Railway Company constitute a through line from Chicago, Illinois, to St Paul and Minneapolis, Minnesota, and to Kansas City, in Missouri, and to Fort Dodge, in Iowa.

This defendant is informed and believes that complainant is engaged in constructing an extension of a line of railway from Fort Dodge, Iowa, to Council Bluffs, Iowa, but it is not informed, and has no knowledge or information save as given by said bill that the said line of railroad is to be constructed "to a connection with the railroad of Union Pacific Railroad Company," and alleges the truth to be that said complainant has not made any agreement or arrangement with Union Pacific Railroad Company whereby such a connection with this defendant's railroad may be had or made.

This defendant hath no knowledge, save as advised by complainant's bill, as to whether or not said complainant has purchased its or any terminals in the City of Council Bluffs, or whether or not said complainant has acquired the right of way for said line of railway, or how much thereof is constructed, nor as to whether or not the same will be completed to Council Bluffs, Iowa, or to a junction with the Union Pacific Railroad at Council Bluffs, Iowa, on or about the month of April, 1903, or at any other time, and as to all said matters it prays that strict proof may be required.

Defendant admits that "The Union Pacific Railroad Company" was duly incorporated and organized under and by virtue of the Acts of Congress of the United States entitled: "An Act to aid in the con-

struction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes;" approved July 1, 1862, and that as so organized said railroad company possessed the powers and was made subject to the duties and obligations and restrictions granted and prescribed in said Act.

Defendant further admits that said Act of Congress was amended by the Act of July 2, 1864, the title of which is stated in complainant's bill. It further alleges that said Acts of Congress were thereafter further amended by other legislation of the Congress of the United States by public laws, reference to which is prayed to be had.

This defendant says that said The Union Pacific Railroad Company as so incorporated had certain corporate powers and authority to lay out, locate, construct, furnish, maintain, use and enjoy a railroad and telegraph line under the terms, upon the conditions and under the rights, privileges and franchises conferred upon it by said legislation of the Congress of the United States, and this defendant does not accept as true or correct the statement of such power and authority as contained in the said complainant's bill in respect to said subject, as containing all of said powers or as correctly stating the powers so granted, and it prays leave to refer to said Acts and to every of them for a more full, complete and perfect statement of the said powers, privileges, authority and franchises granted by said legislation.

Defendant further admits that said The Union Pacific Railroad Company was aided by certain land grants and by certain subsidy bonds of the United States granted and issued under the terms and conditions of the said Acts of Congress, but it submits

that said land grants and the said subsidy bond aid, whether large or small, is entirely immaterial in this controversy and it therefore leaves the complainant to such proof thereof as it may see fit, and it prays that strict proof may be required.

This defendant further admits that on or about the 7th day of March, 1864, Abraham Lincoln, President of the United States, did, upon the application of the railroad company, designate and establish as the point on the western boundary of the State of Iowa east of and opposite to the east line of Section Ten in Township fifteen, North of Range thirteen, East of the Sixth Principal Meridian, in the then Territory of Nebraska, as the initial point of said railroad, which said point was then within the limits of the City of Council Bluffs, in the State of Iowa, but it alleges said point is situated several miles distant from that property of the Union Pacific Railroad Company which it thereafter acquired and which is hereafter referred to as the Bridge Division, having an actual terminus upon what was from the first known as the Union Pacific transfer grounds in Council Bluffs.

Defendant admits that Union Pacific Railroad Company commenced the construction of its said line of railroad from said initial point, east of said Section ten above named, and that it continuously constructed the same to a terminus thereof finally fixed and determined as at a point about five miles from Ogden, in the then Territory of Utah, and that certain subsidy bonds and certain patents of land granted under said several Acts of Congress were issued from time to time in respect of said line so constructed, but it denies that all the patents for granted lands were to have been issued by the Government for or in respect of the constructed lines.

It admits that no government bonds or patents for lands were issued for or in respect of the said company's bridge over the Missouri River, or its approaches, as said bridge and approaches are in said bill or in this answer mentioned or defined.

It admits that the boundary line between the States of Iowa and Nebraska is the channel of the Missouri River, and that it was necessary to provide a railroad bridge across the Missouri River in order to construct the said The Union Pacific Railroad to its terminus in the State of Iowa.

It admits that said railroad company acquired lands and terminals and bridge approaches in the City of Council Bluffs, but it is unable to state the year or the time at which said lands, terminals and bridge approaches were so acquired.

It admits that the terminal grounds so acquired by said railroad company are the same upon which the terminal stations and terminal facilities of said railroad company were located and constructed, and that they are the same grounds upon which the present terminal station of this defendant is situated.

It admits the passage in 1871 by the Congress of the United States of an Act entitled "An Act to authorize The Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa;" approved February 24, 1871, and it prays leave to refer thereto.

It admits further that the said Act of Congress of July 25, 1866, referred to in the said Act of 1871, amongst other things, contained the provision quoted in complainant's bill, but this defendant prays leave that the whole of said Act and every part thereof may be considered, and the same is hereby referred to as though fully quoted at length.

This defendant further answering denies that the complainant in its said bill has perfectly, fully or correctly stated or defined the intention of Congress in providing for and in aiding the construction of Union Pacific Railroad, in fixing its eastern terminus or in authorizing the construction of said bridge, or in the raising of money to build the same, and it prays leave to refer to all of said Acts for a correct determination of the lawful intention of Congress and of the lawful duty or duties imposed upon said Union Pacific Railroad Company, and it alleges that by reason of the facts hereinafter stated none of the said duties, privileges, rights or burdens imposed by said laws of Congress, or any of them, upon said The Union Pacific Railroad Company now are of any binding force or effect upon or against Union Pacific Railroad Company, this defendant.

Further answering defendant admits that the money raised by certain so-called bridge mortgages in said bill described was used by The Union Pacific Railroad Company during the years 1871 and 1872 in constructing a bridge across the Missouri River and tracks and depots connected therewith, extending from tht eastern terminus of The Union Pacific Railroad Company at Council Bluffs, in the State of Iowa, to a point at about Twentieth street in the City of Omaha, Nebraska, a distance of about three and ninety-eight hundredths miles, but it alleges that the said bridge was constructed and the said terminal facilities, lands, tracks and depots connected therewith were acquired, constructed, owned and operated by said railroad company under the authority of the Acts of Congress of 1862 and 1864, aforesaid.

It denies that said railroad company and its successor, the consolidated The Union Pacific Railway Company, or either of them, extended the said tracks

so crossing said bridge from said point in Council Bluffs to a point at or about Twentieth Street in the City of Omaha to and through South Omaha, there connecting with the original tracks of The Union Pacific Railroad Company; but it alleges the truth to be that the point from which the line of railroad was so constructed in the year 1865 was located in the northerly part of what is now the City of Omaha and upon the west bank of the Missouri River, and that said line as originally constructed extended southerly through the City of Omaha to about Jones Street therein, and then southerly and westerly through the said City of Omaha to its western boundary, which was then at about Sixteenth Street in the City of Omaha, and thence westerly to and passing what is now Twentieth Street in said City and thence southerly and westerly through lands and grounds then owned and occupied by private parties and through that territory now occupied by the western part of the City of Omaha and by the City of South Omaha; and that the point of junction between the said lands acquired in the City of Omaha to reach said Missouri River bridge, and embracing the approaches thereto with the said originally constructed line of said The Union Pacific Railroad Company, was at or about Twentieth Street in the said City of Omaha, but it denies that any connection between said bridge division property was made at or within the limits of what is now South Omaha, or at any other point than that above mentioned as Twentieth Street, within the present limits of the City of Omaha.

Defendant admits that from time to time said The Union Pacific Railroad Company and its successor Union Pacific Railway Company added additional tracks between the eastern terminus of said railroad in Council Bluffs and the said point of junction at

Twentieth Street, and it alleges the truth to be that it also added many additional tracks adjacent to the line of said railroad as originally constructed from said initial point to said point of junction, and thereafter additional tracks were also laid from said junction points westerly to and through what is now known as South Omaha, and southerly and westerly therefrom for a great distance.

It admits that the said property acquired for access to said bridge and its approaches east of Twentieth Street embraces a large number of tracks, side-tracks, yards, the present passenger station in Omaha and tracks connected therewith, and also along the said initial point line from the said point of junction northerly through the City of Omaha a large number of tracks, side-tracks,, yards, the present freight station in Omaha and tracks connected with said property.

It admits that no subsidy bonds or patents of land were delivered by the United States in respect of any of the so-called Bridge Division property. It denies that the same was constructed under or by virtue of the Act of 1871, or under the authority thereof, or subject to the conditions and limitations as to the use thereof by other railroads as in said bill alleged, and it submits that by reason of the facts hereinafter stated that whatever burdens, conditions or limitations were by said Act of 1871 imposed upon said railroad company or its successor the said The Union Pacific Railway Company, are of no binding force or effect as against the said property of this defendant.

This defendant further answering denies that The Union Pacific Railway Company made, executed and delivered a mortgage upon said bridge and its approaches, dated April 1st, 1871, it admits that said railroad company did make such a mortgage and

that a copy thereof is attached to said bill as complainant's Exhibit No 1.

It further admits that on April 27, 1871, said railroad company made, executed and delivered the said supplemental mortgage attached to complainant's bill as Exhibit No. 2, and that it issued certain bonds thereunder, the amount of which bonds and the making of which said mortgage this defendant submits is entirely immaterial to any controversy herein and in respect to every such allegation it leaves complainant to its proof.

It admits that The Union Pacific Railway Company was a consolidated corporation under the Acts of July 1st, 1862, July 2d, 1864, and the Acts amendatory thereof and supplemental thereto, and that it was formed by the consolidation of the said The Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway & Telegraph Company, under an agreement bearing date January 24th, 1880, which was filed with the Secretary of the Interior of the United States on the 26th of January, 1880.

It does not admit that the said consolidated The Union Pacific Railway Company by becoming the successor to the said constituent companies became subject to all of the burdens and conditions imposed upon said The Union Pacific Railroad Company, including the said line of railway, the said bridge and its approaches, terminals and other property, but prays leave upon the hearing hereof to submit the original articles of consolidation, and that the same will show under the said Acts a correct statement of the rights, privileges, burdens and conditions by which the said The Union Pacific Railway Company became and was thereafter bound.

Further answering this defendant admits that said

The Union Pacific Railway Company on or about the first day of October, 1885, made, executed and delivered to the Central Trust Company of New York, a mortgage known as the Omaha Bridge Renewal Mortgage, a copy whereof is attached to complainant's bill, marked Exhibit No. 3., and that certain bonds were issued under said mortgage.

It denies that the amount of bonds issued thereunder is correctly or properly stated in said complainant's exhibit. It submits that the said mortgage, the bonds or indebtedness secured thereby and the allegations of complainant's bill in respect thereof are, and each of them are immaterial to any controversy herein, and thereupon it leaves complainant to such further proof as it may be advised.

Further answering, this defendant has no knowledge, save as advised by complainant's bill, in respect to the alleged voting in 1869, or at any other time, by the County of Douglas or the City of Omaha of certain bonds of said County in the amount of Two hundred and fifty thousand dollars and of said City in the amount of two hundred thousand dollars, or of the purposes for which the said county or city voted the same, or that any part of the said so-called city bonds were used for the purchase of real estate or other purpose, or that any real estate was for the purpose or in the manner as stated in said bill donated by private individuals to, said The Union Pacific Railroad Company and accepted by said railroad company, and as to all of said matters this defendant denies complainant's averments prays that strict proof may be had and required.

It admits that on or about the 20th day of January, 1872, one Alvin Saunders, as Trustee of the City of Omaha, in the State of Nebraska, as party of the first part, made and executed to The Union Pacific

Railroad Company, as party of the second part, a certain deed, a copy of which is set forth on pages 20 to 30, inclusive, of complainant's said bill, and it admits that said deed was duly recorded in the office of the county clerk of Douglas County, Nebraska, on February 2, 1872, in Book 12 of Deeds, at page 220, as in said bill recited. It alleges that the trust under which said Alvin Saunders held said real estate was and is defined and declared by a certain declaration of trust made in writing by said Alvin Saunders on August 1, 1869, a copy whereof is hereto annexed marked Exhibit A, and prayed to be taken as a part of this answer.

Defendant denies that said real estate is the real estate which was purchased by the bonds voted by the City of Omaha and also donated by private subscription, and in respect to complainant's allegations it prays that strict proof may be required.

It admits that said deed was accepted by said The Union Pacific Railroad Company, but it denies that the terms, covenants and conditions therein named were binding upon said The Union Pacific Railroad Company and its successors, or any or all other companies which came into possession of or used the said property.

It denies that the said supposed contract alleged by the bill and pretended to be set forth in said instrument became or was or is an irrevocable or other contract running with the said property for the benefit of any other railroad that might thereafter construct a railroad to Omaha or to Council Bluffs, and it alleges that the said supposed contract and the terms and conditions therein named were then, always have been and now are contrary to law, in violation of the terms of said Acts of Congress, illegal and void.

It denies that the approaches to said bridge on the west side of the Missouri River, the passenger station and the track and terminal grounds so known as the bridge and its approaches are now situated on, over and across said property, but alleges the truth to be that the said lands between the west end of the Missoruri River bridge, occupied by the said tracks, passenger station and terminals in the City of Omaha include and embrace a large amount of ground and lands acquired by said railroad company otherwise than by or under said deed, but it admits that the grounds described in said Saunders deed have been used as a part of the grounds for yards, terminal facilities and approaches at Omaha between the west end of the said bridge and the said junction point at or near Twentieth Street in the said City of Omaha.

This defendant has no knowledge, information or belief in respect to the alleged arrangement made in the year 1889 by and between the Union Pacific Railway Company and the Chicago, Burlington & Quincy Railroad Company, as to a plan or agreement for the construction of a union depot in the city of Omaha or in respect to the organization of a union depot company as alleged in said bill, or of the proposition or purpose to quit-claim and release to said The Union Pacific Railway Company of any of the rights of the City of Omaha in or to the real estate described in said Saunders deed, or the purpose of any such proposed conveyance, or that one Stuht and one Howe brought the action alleged in said bill against the Omaha Union Depot Company and others, or of the judgment or decree rendered therein, or of the opinion of the Court therein, and, therefore, this defendant denies the same and prays that strict proof may be required, but it submits that The Union Pacific Railway Company was not in any

way bound or concluded by the said suit or decree therein, or the opinion of the Court therein, because the said The Union Pacific Railway Company was not a party thereto. It avers the truth to be that the said supposed agreement, if any there was, between the said The Union Pacifiy Railway Company and the Chicago, Burlington & Quincy Railroad Company, and the agreement, if any, between the said companies and the said supposed Union Depot Company of Omaha, were not in existence at the time of the purchase of the properties of The Union Pacific Railway Company by this defendant.

This defendant further answering admits that The Union Pacific Railway Company continued to operate the railroad formerly of The Union Pacific Railroad Company, the said bridge and its approaches until about the 9th day of October, 1893, when Oliver Ames Second and Samuel Carr, as Executors of the Last Will and Testament of Frederick L. Ames, deceased, and others, commenced a suit against The Union Pacific Railway Company, commonly called the Ames suit, in the Circuit Court of the United States for the District of Nebraska, and that such proceedings were had therein that Receivers of said property were appointed in said Court; that other like suits were commenced and other like bills filed in other jurisdictions and that thereafter the said Receivers in said several Ames suits took possession of, operated and controlled the property of said The Union Pacific Railway Company, including said bridge and its approaches, under the direction of the said Courts, until the 21st day of January, 1895, when the same Receivers were appointed as Receivers in the cause in said bill mentioned and described as the said Dexter cause.

Defendant admits that on or about the 1st day of

November, 1865, The Union Pacific Railroad Company made, executed and delivered to Edwin D. Morgan and Oakes Ames its first mortgage of its railway and property to secure its first mortgage bonds, and that afterwards F. Gordon Dexter and Oliver Ames Second were substituted as Trustees of said mortgage, and that under and by virtue of said mortgage bonds were issued, certified and delivered to the extent of $27,229,000, and that on the 21st day of January, 1895, a suit was brought by the last named trustees against the Union Pacific Railway Company, including the trustees of the several bridge mortgages, to foreclose the said mortgage upon the said line of railway between Council Bluffs, the eastern terminus of said railway, and a point at or near Ogden.

That said suit was brought in the United States Circuit Court for the District of Nebraska, and other like actions were also brought in other of said United States Circuit Courts in which the said Ames suit was brought, and in the District Court of the Third Judicial District of Utah, and that appropriately said suit is and may be referred to as the Dexter case, which, however, was brought and maintained in the said Circuit Courts of the United States for the Districts of Nebraska, Colorado and Wyoming, and in the Third Judicial District Court of Utah Territory, which last named case was afterwards, upon the admission of the Territory of Utah into the Union, transferred and removed into the Circuit Court of the United States for the District of Utah.

Defendant admits that the same Receivers theretofore appointed in said Ames case were appointed as Receivers in said Dexter case, and that said last named Receivers, as Receivers in the Dexter case thereafter continued to operate said railroad and

property until the same was sold, transferred and delivered to the defendant herein.

Defendant admits that in said cause on the 29th day of July, 1897, a final decree was duly entered in said case in the Circuit Court of the United States for the District of Nebraska, and thereafter duly entered in each and all of the Courts in which said cause was pending and in which the said mortgage property was located (but not in which the said The Union Pacific Railway Company had property) wherein and whereby, among other things, it was ordered, adjudged and decreed, not that all of the property of said railway company, but all of the mortgaged property of said railway company embraced in said mortgage should be sold, subject, however, to the lien of said bridge mortgages, by the Master, at public auction, to the highest bidder, upon the mortgage premises at the freight station of The Union Pacific Railway Company in the City of Omaha, Nebraska, after due notice. That due notice was given and the sale duly made on November 2, 1897, to Louis Fitzgerald and Alvin W. Krech, as purchasing trustees, for $50,637,435; that a report of said sale was duly made and the same was confirmed.

Defendant admits that said Louis Fitzgerald and Alvin W. Krech sold, transferred and set over to Union Pacific Railroad Company, this defendant, a corporation of the State of Utah, all of their right to receive the conveyances of said railroad property and franchises, and that on January 22nd, 1898, the said Special Master made, executed and delivered a deed of said property to said Union Pacific Railroad Company.

Defendant denies that said foreclosure proceedings were had, and the said bid of Louis Fitzgerald and Alvin W. Krech was made, and the said deed made

to Union Pacific Railroad Company in pursuance of a plan and agreement of reorganization entered into between said The Union Pacific Railway Company, so organized under the laws of Congress above set forth, and the stockholders and bondholders of the said The Union Pacific Railway Company, and solely for the purpose of reorganizing said The Union Pacific Railway Company, but, on the contrary, this defendant alleges that said foreclosure proceedings were had for the sole purpose of enforcing payment of the debt secured by the said first mortgage of The Union Pacific Railroad Company, and the obligations imposed upon said property under and by virtue of the terms of the mortgage aforesaid.

This defendant further answering alleges that the United States of America, on or about the 29th day of January, 1897, filed its certain bill in the Circuit Court of the United States for the Districts of Nebraska, Colorado, Wyoming, Utah and Iowa, against The Union Pacific Railway Company and others, for the foreclosure of the *ipso facto* mortgage of the United States of America, and its subsidy lien on the property of The Union Pacific Railway Company, comprising and embracing the Union Division and the so-called Bridge Division thereof. That thereafter in said cause in due course a decree was entered finding and determining the amount due to the United States under its said *ipso facto* mortgage and its said subsidy lien, and declaring that the same was a lien and mortgage upon the railroad and property of The Union Pacific Railway Company extending from its terminus in Council Bluffs, Iowa, to the western terminus thereof at a point near Ogden in Utah, including also the so-called Bridge Division of said railway, being the property extending from the

Council Bluffs terminal station and terminal yards across the Missouri River Bridge to a junction with the main line of said The Union Pacific Railway Company at or near Twentieth Street in Omaha, and ordered and decreed that all of said property of the said The Union Pacific Railway Company embraced in and subject to the said *ipso facto* mortgage and subsidy lien of the United States, should be sold for the satisfaction of the sums found due therein by the terms of said decree, and that thereafter and in pursuance to the terms of said decree all of the said properties subject to and covered by said lien were so sold, including the said so-called Bridge Division of said The Union Pacific Railway Company, which is part of the property in respect of which complainant pretends to demand relief, and that thereafter, in pursuance to the terms and conditions of said decree, Union Pacific Railroad Company, this defendant, became and was the purchaser of all of said property, and the same was, in pursuance to the terms and conditions of said decree, duly sold and conveyed to this defendant as purchaser under said decree, and that thereby all the properties in said deed and decree mentioned and described, including said Bridge Division, were conveyed to this respondent to be by it held, owned and enjoyed, subject only to the terms and conditions of the said decree of sale.

It further alleges the truth to be that this defendant holds and owns said property as a part of its depot grounds, right-of-way, and the said bridge and its approaches, as its own property, free and clear of any lien, charge or duty to the United States other than that set forth in said decree of foreclosure and sale of the said properties under the said United States of America subsidy lien and *ipso facto* mortgage, and also under the said first mortgage,

which was that said property and all of it was and is "Subject to the right of the Government to have the preference at all times in the use of fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the telegraph line and railroad embraced in said mortgage, for the transmission of dispatches over said telegraph line, and the transportation of mails, troops and munitions of war, supplies and public stores upon such railroad, for the Government whenever requested by any Department thereof."

This respondent further answering submits and offers to submit the record of the said cause of the United States of America against The Union Pacific Railway Company and others, including the bill, findings, decree and the deed issued thereunder, upon the hearing hereof, and prays that they may, by reference, be considered a part hereof as fully to all intents and purposes as if the same were herein set out at length.

This defendant admits that it was incorporated in the year 1897, before the sale of said properties under either of said decrees and before the making of any of the said conveyances to it. It denies that Union Pacific Railroad Company acquired under said deeds and proceedings any of its said property "subject to all the terms and conditions of said Acts of Congress," but alleges the truth to be that it obtained the title to all of its said property free and clear from any lien or claim of the United States, or any duty or obligation to the United States, or to the public, other than that imposed by the terms of the said decree as aforesaid.

It further denies that the said pretended terms and conditions which were inserted in and made a part

of the said deed from said Alvin Saunders as Trustee for the City of Omaha were at any time of any binding force or validity on the said The Union Pacific Railroad Company, or its said sucessor, The Union Pacific Railway Company, because said terms and conditions were, and each of them were, in violation of the said Acts of Congress, and it denies that the said property is now owned or held by this defendant subject to all or any of the pretended conditions, limitations and obligations referred to in complainant's bill.

This defendant hath no knowledge whether the said Louis Fitzgerald and Alvin W. Ktech purchased said premises with full knowledge, or with any knowledge of the conditions and obligations alleged to have been imposed by the said Act of Congress of 1871, and denies that there were any conditions or obligations imposed by said Act of Congress as against the said properties or the said Louis Fitzgerald and Alvin W. Krech at the time of the purchase of said property, and it denies that the said bridge or its approaches were built or acquired under or by virtue of said Act of 1871. It denies that the said purchasers were charged with or had full or other knowledge of any supposed contracts between said The Union Pacific Railroad Company and the City of Omaha and the County of Douglas in Nebraska, or of the conditions and covenants set forth in said deed of Alvin Saunders embracing the property upon which the said bridge, approaches, station and tracks are situated, and it denies that they, or either of them took said property subject to all or any of the said covenants and conditions referred to and described in the complainant's bill, or that they or either of them are bound to carry out the same, nor yet did this defendant have any knowledge or infor-

mation in respect to said several matters, nor d
this defendant take the said property subject to an
of the so-called covenants and conditions, and it a
leges that it is not bound to carry out the same o
any of them.

Further answering this respondent admits tha
about the 1st day of May, 1890, the said The Unio
Pacific Railway Company made and entered into
certain contract with the Chicago, Rock Island &
Pacific Railway Company wherein and whereby th
said The Union Pacific Railway Company cove
nanted and agreed to and with the said Chicago
Rock Island & Pacific Railway Company to and di
let the said Chicago, Rock Island & Pacific Railwa
Company into the full, equal and joint possessio
and use of certain of its main and passing track
between the terminus of said tracks in the City o
Council Bluffs, Iowa, and a line drawn at righ
angles to said tracks within one and one-half mile
south from the passenger station of said The Unio
Pacific Railway Company at South Omaha, Ne
braska, including the bridge, but it denies that it l
or leased to the said Chicago, Rock Island & Pac
fic Railway Company the said Union Depot, or track
connected therewith in Omaha. For a more parti
ular and definite statement of the terms and cond
tions of said lease to the Chicago, Rock Island
Pacific Railway Company and the terms embrac
therein this defendant prays leave to refer.

It also admits that a similar contract was made
the said The Union Pacific Railway Company as
the use of its bridge and the approaches thereto, wi
the Chicago, Milwaukee & St. Paul Railway Co
pany, and that complainant's exhibits Nos. 4 and
are copies of the said contracts made respectiv
with the said Chicago, Rock Island & Pacific R

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way Company and the said Chicago, Milwaukee & St. Paul Railway Company.

It admits further that the said The Union Pacific Railway Company declined and refused to carry out the terms of the said contracts. That thereupon certain suits were brought against The Union Pacific Railway Company to enforce the specific performance of said contracts, upon which final decrees were rendered after trial in the Circuit Court of the United States for the District of Nebraska, and that thereby judgment was given that said The Union Pacific Railway Company should perform the said contracts according to their respective terms, but this defendant denies that there was any adjudication or decree that the said Acts of Congress under which the said bridge and its approaches were so constructed which required the said The Union Pacific Railway Company to allow the Chicago, Rock Island & Pacific Railway Company and the Chicago, Milwaukee & St. Paul Railway Company, or any other company or companies, to run engines, cars and trains over said bridge and tracks between Council Bluffs and South Omaha, or elsewhere; and further denies that it was therein found that the said property between Council Bluffs and South Omaha, including the said depot at Omaha, constituted the bridge and its approaches within the meaning of the Acts of Congress, and denies that there was any finding or decree that under and by virtue of said Acts of Congress, or any of said Acts of Congress, there was anything which required The Union Pacific Railway Company to allow any other railway company to run its trains over said bridge and its approaches, or that made any definition of the said approaches to said bridge, and this defendant prays leave to refer to the said decree and record in said cause for a true and complete state-

ment of the findings and determination of the Court in that behalf; and it further alleges the truth to be that in and by said proceedings there was an adjudication that the contract of the said The Union Pacific Railway Company with the said Chicago, Rock Island & Pacific Railway Company and with the said Chicago, Milwaukee & St. Paul Railway Company were valid and subsisting contracts, capable of enforcement according to their terms, and that the same should be enforced as the contracts of the said The Union Pacific Railway Company, and not any finding or decree in respect to the said several Acts of Congress, except that the said The Union Pacific Railway Company had power under said Acts to make said contracts.

This defendant denies that it continued to carry out the terms and conditions of said contracts with the Chicago, Rock Island & Pacific Railway Company and the Chicago, Milwaukee & St. Paul Railway Company, pursuant to the decree of said Court, but alleges the truth to be that under an arrangement and agreement made with the Chicago, Rock Island & Pacific Railway Company the terms and conditions of the contract formerly made by the said The Union Pacific Railway Company were left undisturbed, and the said Chicago, Rock Island & Pacific Railway Company was permitted to continue, and it was agreed that the terms of said contract as to the said properties between Council Bluffs and South Omaha, as aforesaid, between The Union Pacific Railway Company and the said Chicago, Rock Island & Pacific Railway Company should be the contract between Union Pacific Railroad Company, this defendant, and said Chicago, Rock Island & Pacific Railway Company.

It further avers that in the month of May, 1898,

the said Union Pacific Railroad Company, this defendant, made, executed and delivered to the Chicago, Milwaukee & St. Paul Railway Company a contract or agreement under which the said Chicago, Milwaukee & St. Paul Railway Company now holds and occupies said premises under this defendant.

This defendant further answering states that it is true that in the year 1901 it constructed a new passenger station in the City of Omaha, in part upon the property mentioned and described in the said Saunders deed and in part upon property acquired by it from other sources, but it denies that the said property upon which the same, or any part thereof, was constructed was subject to any limitations, charges or conditions by the Acts of Congress, as alleged in said bill.

This defendant admits that it made, executed and delivered the said agreement set forth and shown in complainant's exhibits Nos. 6 and 7 attached to the said bill, and alleges the truth to be that it made said agreement with the said companies, namely, the Chicago and Northwestern Railway Company and the Chicago, Rock Island & Pacific Railway Company and the Chicago, Milwaukee & St. Paul Railway Company upon considerations, terms and agreements mutually satisfactory to the parties to said agreement, and that the same was made because of the agreement of the parties in respect to the terms and conditions in said agreement written, and not otherwise.

This defendant further answering says that it is true the City of Omaha has about 125,000 people; that it has a heavy wholesale jobbing and shipping business and that a great part thereof is situated and located along and near certain terminals and tracks of Union Pacific Railroad Company in the

City of Omaha, but it denies that any considerable part of the said wholesale, jobbing or shipping business local to the City of Omaha is located upon, along or near that portion of the tracks and property of Union Pacific Railroad Company between the west end of the Missouri River Bridge and the junction with the original main tracks of The Union Pacific Railroad Company near Twentieth Street in said City, and alleges the truth to be that there is located upon that part of this defendant's said property between the west end of the said Missouri River Bridge and the said junction point near Twentieth Street, and upon a part of the said property described in said Saunders deed, a passenger station, with the tracks, buildings and facilities necessary and proper for the use thereof, and which is used by this defendant company and by several other companies under the terms of the contract of September, 1898, hereinbefore referred to, and also the other main line tracks and passing tracks of Union Pacific Railroad Company for the carriage and transportation of freight traffic from its Council Bluff terminus westward, for the use and benefit of its entire railroad, and also certain freight handling tracks for the handling and management of freight trains, and that except a very few industries and shipping houses there are no side tracks or sidings directly connected with the said main tracks, passing tracks or freight tracks for the benefit of industries adjacent thereto, and that almost all of the shipping business of the City of Omaha which is located upon tracks, side tracks, spurs or switches connected with the railroad of Union Pacific Railroad Company, are situated upon and connected with the said original main tracks of The Union Pacific Railroad Company, and not upon or directly connected with any part of the said so-called Bridge Division thereof.

This defendant denies that that part of the business part of the said City of Omaha is so located, by compactness or otherwise, that it is impossible to procure additional terminals for a new railroad constructed into said City that will accommodate the business interests thereof, and it denies that it would be to the business advantage or interest of said city, or the inhabitants thereof, or that it is in any wise, or for any other purpose necessary that the complainant should have the right to make connection with and use the said bridge and approaches of said Union Pacific Railroad Company, but alleges the truth to be that if the said complainant desires to obtain access into the said City of Omaha it may and can do so without the use of the said Union Pacific Railroad Company's bridge or approaches or any part of its said property.

It denies that South Omaha is in reality or otherwise a part of the said City of Omaha. It admits that the northern corporate line of the municipality of South Omaha and the southerly corporate line of the municipality of Omaha in great part, although not altogether, coincide. It admits that many streets, although it denies that all of said streets, from one of the municipalities to the other are continuous. It admits that through lines of street railways are operated and owned by the same company to, through and beyond each of the cities of Omaha and South Omaha. It has no knowledge as to whether or not the same water, gas and electric companies serve the inhabitants and the public of both cities, and has no knowledge or information in respect to the continuity of the mains, pipes and aqueducts. It admits that the commercial and business interests of the two cities are intimately connected, but denies that they are as intimately connected, as

if they were one municipal corporation. It admits that at South Omaha large and extensive stock yards, packing-houses and other industries are situated, but it denies that it is necessary for complainant to reach the same in order to serve the principal business interests of Omaha or South Omaha, or either or both of them, or the stock yards and packing houses and other manufacturing and industrial enterprises in South Omaha

Respondent says that the present city of South Omaha has grown up around stock yards and packing industries, the location of which at said place was made about the years 1887 to 1890. That South Omaha is a new town which has grown up under separate corporate organization and with separate business interests and locations long since the construction of this defendant's railroad. That there is no connection whatever between the business interests of South Omaha, the stock yards, manufacturing or other establishments, and the so-called Bridge Division of Union Pacific Railroad Company, which was acquired and created as said Bridge Division and for its uses and purposes long before the existence of said South Omaha.

It further alleges that the said pretended, but void and illegal conditions, covenants and terms written in the said Saunders deed, and the property described in said Saunders deed, had and has no relation to any of the property, tracks, railroads, rights or privileges of the Union Pacific Railroad Company to or at any point west of Twentieth Street in the City of Omaha, nor to any industry or industries which have grown up along the line of this respondent's railroad, either in South Omaha or in Omaha west of Twentieth Street, or elsewhere.

This defendant denies that there are any railroads

from the west, southwest or northwest which terminate at South Omaha. It alleges that the Chicago, Rock Island & Pacific Railway Company operates its own line of railroad from Chicago through Council Bluffs and from Council Bluffs over the line of this respondent to a connection with its own line within the limits of the City of South Omaha. It denies that the Missouri Pacific Railway Company has any terminus in South Omaha, and alleges the truth to be that the said Missouri Pacific Railway Company operates a line of railroad through South Omaha to its terminus in the City of Omaha. It alleges that the railroad formerly of the Fremont, Elkhorn & Missouri Valley Railroad Company, but now a part of the Chicago & Northwestern Railway Company, operate a line of railroad through the cities of Omaha and of South Omaha.

It denies that for the business interests of the cities of Omaha and South Omaha, or for the interests of the complainant company, or for the public, it is necessary that complainant company make connection with said railroads at South Omaha, or that it should make connection with the Union Pacific Railroad.

It denies that the tracks of the Union Pacific Railroad Company and the Chicago, Burlington & Quincy Railroad Company run through any narrow ravine, but, on the contrary, that the said railroads run between said Omaha and South Omaha upon a hillside, but that there remains ample space and opportunity for the construction of one or more railroads near them.

It denies that the available space for the location of tracks between Omaha and South Omaha is completely filled by railroad tracks already constructed by the said Union Pacific Railroad Company and the said Burlington Company.

It denies that by reason of the topography of the country it is impracticable, or practically impossible to properly connect the line of complainant company ending in Council Bluffs with the railroads at South Omaha, or to reach the industries at South Omaha or the industries in Omaha, or to accommodate the business of said cities without using the said Union Pacific bridge and its approaches, including said tracks to South Omaha, but, on the contrary, this defendant alleges that there are reasonable and ample facilities for reaching the City of South Omaha and for establishing terminals and business facilities in the city of Omaha without using any part of the properties of said Union Pacific Railroad Company.

This defendant admits that it is the owner of its said railroad from a point near the north line of Section 10, aforesaid, through the City of Omaha, as it was originally constructed, passing the said junction with the said Bridge Division property at or near Twentieth Street, to, through and beyond the City of South Omaha, and of the tracks, side tracks and terminal facilities for the use of shippers and patrons of its road adjacent thereto. That it lawfully acquired these properties and owns the same for the benefit of its own railroad and business and that no part of said property can be lawfully taken or used by said complainant without its consent, and that it has not directly or indirectly agreed with the complainant, or consented to the complainant's use of the same, or any part thereof. It further alleges that it was also the owner of and entitled to the use of all of its said property situated between the terminal grounds and facilities in Council Bluffs, Iowa, and the junction with its said main line of railroad at or near Twentieth Street in the City of Omaha. That said complainant has not connection with, or any right, title

or interest in or to said property, nor is complainant in privity with the present or any former owner of the same or the title thereto in any manner whatever whereby it may lawfully claim, or have any right to claim access to or the use thereof, or any part thereof, without the consent of this defendant, and that this defendant has not consented to the use of said last mentioned property by complainant on any terms whatever; nor has complainant requested this defendant to have the use of said so-called bridge division property, or of any part thereof, upon any terms or conditions whatever.

It denies that for the reasons stated in complainant's said bill, in the paragraph thereof commencing on page 47 of said printed bill and ending on page 49 thereof, or for any other reasons, that this defendant is or has become bound to furnish to complainant the use of its said bridge and approaches, and the depots and tracks connected therewith, nor that the tracks from the eastern terminus of defendant's railroad in Council Bluffs to a point one and one-half miles south of the depot in South Omaha nor is it necessary for any of said alleged, or other reasons, to make any of said connections, and it denies that the said tracks, including the yards, depots and appurtenances, do constitute or have constituted the said bridge and its apppoaches within the meaning of said Acts of Congress, as considered by the Supreme Court in the said Chicago, Rock Island & Pacific and the said Chicago, Milwaukee & St. Paul cases, or for any other reason whatever, and it denies that the said The Union Pacific Railway Company, or this defendant, so treated said tracks as part of its said bridge and approaches, or as necessary for a proper connection with the railroads aforesaid.

Defendant admits that about the month of December, 1901, the complainant applied to the defendant company, through its President, for the right to operate its trains over and across said bridge and to use the passenger depot of the said defendant company and the tracks to South Omaha, and that certain negotiations were assumed and undertaken to be assumed by the said General Manager of the complainant, and by Mr. Horace G Burt, the President of Union Pacific Railroad Company, and that said negotiations were fruitless in that the said complainant and the defendant were unable to agree upon terms and conditions upon which the complainant might use this defendant's said tracks and facilities, and it submits that complainant was at all times advised and well knew that the said suggestions and negotiations for an agreement and an arrangement for the use of this defendant's said property were not, and were not intended, to be suggestions, propositions or agreements for use thereof by complainant, and that the sole power of concluding and agreeing in respect to such suggestions, propositions or arrangements was vested in the due corporate officers of complainant and of defendant and this defendant expressly denies the complainant by corporate action authorized, empowered or directed the making of any such arrangement, agreement or contract with this defendant, and also denies that the Board of Directors, or other proper corporate authority of this defendant, ever made or agreed to make or agree to and with the complainant upon the terms of any arrangement, agreement or contract whereby the complainant would or might be granted the use of said premises so applied for; of all of which the complainant at all times had notice.

Defendant admits that about the 31st day of Octo-

ber, 1902, complainant made a formal demand in writing upon this defendant, a copy of which is set forth in said complainant's printed bill at pages 53 to 57 thereof, and that an original of the same was served upon this defendant by delivering a copy thereof to the President of said company at Omaha, Nebraska, and it alleges that said complainant has never applied to this defendant for the use by complainant of said bridge division property, except that in said written demand described.

Defendant further admits that certain railroads were named as parties who might be admitted to the use of defendant's passenger station at Omaha as set forth and alleged by complainant, and as stated in the contracts of September, 1898, exhibits 6 and 7 attached to complainant's bill, and it admits that Union Pacific Railroad Company has not consented to the application of the complainant for the right to enter said passenger station and to use the same, but respondent refers to the said contracts stated in Exhibits 6 and 7. This defendant also admits that it has not agreed with the complainant for the use of its said tracks to South Omaha aforesaid, and its bridge and approaches upon contracts like in form with those heretofore executed and entered into between this defendant and the said Chicago, Rock Island & Pacific Railway Company and the said Chicago, Milwaukee & St. Paul Railway Company, and it denies that the compensation stated in said contracts, under the present conditions, is such a reasonable compensation for the use of its said bridge and approaches as this respondent would be satisfied to receive from said complainant.

It admits that this defendant's officers furnished during the progress of the negotiations mentioned, a copy of a map showing what arrangement of tracks

and of property would be a connection satisfactory to the defendant company in case an agreement should be reached between the complainant and defendant company providing for the use of its said tracks and facilities, and it admits that such an arrangement and connection, or some modification thereof necessary to the practical working of the plan, would be satisfactory to this defendant in case a reasonable and satisfactory agreement with said complainant company should be effected, but this defendant submits that this Court has no power, jurisdiction, right or authority to control this defendant in respect of any such agreement, or to require this defendant to surrender any part of the right to own, control, manage and operate its own property to the discretion of the complainant, or to the discretion of the Court, and to so require this defendant would be to deprive it of its property without due process of law, to deny it the equal protection of the law, and in violation of its right to own, hold and manage its own property, and defendant asserts its right to hold, maintain, own and occupy and use its stations, tracks, bridge and approaches and other property free from any interference under the claim or right asserted by the complainant in said bill as against the whole world.

Further answering, defendant has no knowledge whether or not on or about the 7th day of January, 1903, or at any other time, the Board of Directors of the complainant company passed a resolution accepting the terms and provisions of the Act of the Legislature of the State of Nebraska referred to in the amendment to the complainant's said bill, for the purpose of enabling it to become a domestic corporation of the State of Nebraska, or for any other purpose, or whether or not said Board, by such resolution, directed a copy of its charter and articles of

association, together with a certified copy of said resolution, to be filed and recorded with the Secretary of State, or whether or not, in fact, the said certified copies, together with certified copies of articles of association were filed with the Secretary of State of the State of Nebraska, and in respect to said matter this defendant leaves the complainant to its proof and prays that strict proof thereof may be required, and defendant alleges that notwithstanding the said alleged acts and doings the complainant hath no corporate power to own, control or operate a railroad in Nebraska, or to acquire any interest in railroad or other property in the State of Nebraska, nor to make any valid and binding contract or agreement in respect to any of such property in the State of Nebraska.

All of which this defendant stands ready, upon the hearing of this case, and in accordance with the rules, practice and procedure of this honorable Court to maintain and prove, without this, that if there is any other matter, cause or thing in said bill of complaint contained material or necessary for this defendant to make answer to and not herein well and sufficiently answered, confessed or denied as true to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable Court shall direct.

It prays to be hence dismissed in this behalf accordingly.

UNION PACIFIC RAILROAD COMPANY,
By John N. Baldwin,
Its Solicitor.

By W. R. KELLY,
Of Counsel.

Filed March 9, 1903.

"EXHIBIT A."

*Saunders to the City of Omaha:*

Whereas, the City Council of the City of Omaha designated and appointed Alvin Saunders, Ezra Miller, Geo. L. Miller, O. P. Hurford, Augustus Kountze and Enos Lowe, a Committee or Board of Adjustment to make settlement with the owners of the property required by the Union Pacific Railroad Company for depot grounds and grounds for the right of way connected with their bridge over the Missouri River, and pay for the same with the proceeds of the bonds issued by the said City for such purpose and cause the said property to be conveyed to the said railroad company for the purposes aforesaid. And whereas, in furtherance of the objects for which said Board was constituted it was deemed expedient by said Board to have the title to such property as the same was paid for and adjusted conveyed to Alvin Saunders to be held by him in trust for the City of Omaha in making such settlement and to dispose of the real estate to the Union Pacific Railroad Company for the purpose aforesaid with such restrictions and limitations as might be deemed necessary to protect the interests of said city under the direction of said board. Now therefore, be it known that all the lands and property which is or shall be conveyed to me lying within the lines of the grounds, for said depot grounds and grounds for the right of way as shown upon the map of the same, filed with the awards for the appropriation of said grounds by said company, are held by me in trust for the sole use and behoof of the City of Omaha to be disposed of and conveyed by me under the direction of the said Board at such time as they shall request for the purpose aforesaid. And I do hereby acklowledge, testify and declare that the consideration money paid and to be

paid for the said property is not my own proper money, but the money of the City of Omaha. And further, that on request of said Board and at the charge of the said Board or City I will grant and convey the said property without any consideration therefor, as the said Board shall direct for the furtherance of the objects and purposes aforesaid.

In witness whereof I hereunto set my hand this 31st day of August, 1869.

ALVIN SAUNDERS.

In presence of

W. H. S. Hughes.

In Rev. $1.00.

STATE OF NEBRASKA, } ss.
DOUGLAS COUNTY. }

On this first day of September, A.D. 1869, before me, a Notary Public, in and for said county, personally came Alvin Saunders, who is known to me to be the identical person who signed the foregoing instrument of writing and acknowledged the same to be his voluntary act and deed.

Witness my hand and official seal the date above written.

W. H. S. HUGHES,
Notary Public.

(L. S.)

Recorded October 20th, A. D. 1869 at 4:¼ o'clock P. M.

Pleas before the Honorable W. H. Munger, judge of the district court of the United States for the district of Nebraska, sitting in the circuit court of the United States for the district of Nebraska, within the eighth judicial circuit, at the May, 1903, term thereof.

Be it remembered that on the 6th day of November, 1902, a bill of complaint was filed in the clerk's office of said circuit court, which said bill of complaint is in words and figures following, to-wit:

This bill of complaint is entitled Mason City & Fort Dodge Railroad Company, complainant, *vs.* Union Pacific Railroad Company, defendant.

This bill of complaint was printed and has been certified to and identified by the clerk of this court, with his signature thereto, pages 1 to 207, inclusive:

Thereupon afterwards, to-wit: on the 5th day of January, 1903, a demurrer was filed in said case, which said demurrer is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

MASON CITY & FORT DODGE RAILROAD COMPANY, Complainant,
vs.
UNION PACIFIC RAILROAD COMPANY, Defendant.

*Demurrer of Union Pacific Railroad Company.*

The demurrer of the Union Pacific Railroad Company to the bill of complaint of the Mason City & Fort Dodge Railroad Company, filed herein upon the 6th day of November, 1902.

This defendant by protest, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and hereby set forth and alleged, doth demur thereto and for cause of demurrer showeth that the said complainant hath not by its said bill of complaint made such a case as entitles it in a court of equity to any relief from or against this defendant touching matters contained in the said bill of complaint or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill of complaint and to all the matters and things therein contained and humbly prays the judgment of this honorable court

whether it shall be compelled to make any further or other answer to the said bill of complaint, and it prays to be hence dismissed with its reasonable costs in this behalf sustained.

UNION PACIFIC RAILROAD COMPANY,
By JOHN N. BALDWIN, *Its Solicitor.*

I certify that in my opinion the foregoing demurrer of the Union Pacific Railroad Company to the bill of complaint of the Mason City & Fort Dodge Railroad Company herein is well founded in law, and proper to be filed in the above cause.

JOHN N. BALDWIN,
*Counsel for Union Pacific Railroad Company.*

UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

John N. Baldwin, being first duly sworn, does depose and say: That he has read the foregoing demurrer to the bill of complaint of Mason City & Fort Dodge Railroad Company filed herein, and that the said demurrer is not interposed for the purpose of delaying said suit or any proceedings therein.

JOHN N. BALDWIN.

Dated at Omaha, Nebrasba, this 26th day of December, 1902.

Subscribed and sworn to before me this 26th day of December, 1902.

FRANCIS J. MIEDING,
[SEAL.] *Notary Public.*

Endorsed: Filed Jan. 5, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, to-wit: On the 14th day of January, 1903, a motion for leave to amend bill of complaint was filed in said case, which said motion is in words and figures following, to wit:

In the Circuit Court of the United States within and for the District of Nebraska.

MASON CITY & FORT DODGE RAILROAD COMPANY, Complainant,
vs.
UNION PACIFIC RAILROAD COMPANY, Defendant.

*Motion.*

Comes now the above named complainant and moves the court for leave to amend its bill of complaint herein, by interlineation by

inserting immediately before the paragraph beginning at the bottom of page 60 in said bill of complaint, the following paragraph:

That heretofore, to-wit: on the 7th day of January, A. D. 1903, the board of directors of The Mason City & Fort Dodge Railroad Company, the complainant herein, duly passed a resolution accepting the terms and provisions of the act of the legislature of the State of Nebraska, entitled "An act to enable foreign corporations to become domestic corporations of this State," approved March 19, 1889; and for the purpose of enabling it to become a domestic corporation of the State of Nebraska, the Mason City & Fort Dodge Railroad Company did by said resolution direct that a true copy of its charter and articles of association, together with a certified copy of the said resolution, be filed and recorded with the secretary of state of the State of Nebraska. That thereafter, and on the 13th day of January, A. D., 1903, a certified copy of said resolution of the board of directors of the Mason City & Fort Dodge Railroad Company, together with a certified copy of its articles of incorporation, were duly filed with the secretary of state of the State of Nebraska, and duly recorded as provided by law; and in all things the said railroad company has complied with the laws of the State of Nebraska.

FRANK B. KELLOGG,
JAMES M. WOOLWORTH,
WILLIAM D. McHUGH,
*Solicitors for Complainants.*

Endorsed: Filed Jan. 14, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, to-wit: at the November, 1902, term of said court, and on the said 14th day of January, 1903, the following proceedings were had and done in said case, as appears of record on Journal No. 2 of said court, had on said day, to-wit:

MASON CITY & FORT DODGE RAILROAD COMPANY
vs.
UNION PACIFIC RAILROAD COMPANY.
} No. 55, Doc. V.

Leave is hereby granted to the complainant to amend its bill as stated in the motion heretofore filed.

Thereupon afterwards, to-wit: at the November, 1902, term of said court, and on the 17th day of January, 1903, the following proceedings were had and done in said case, as appears of record on Journal No. 2 of said court, had on said day, to-wit:

MASON CITY & FORT DODGE RAILROAD COMPANY
*vs.*
UNION PACIFIC RAILROAD COMPANY. } No. 55, Doc. V.

It is ordered that the order for leave to amend bill heretofore entered herein on the 14th day of January, 1903, be, and the same hereby is vacated and set aside, and the application to amend is continued for hearing to a future date.

Thereupon afterwards, to-wit: on the 11th day of February, 1903, "Motion of plaintiff to reinstate order of 1–14–'03," was *was* filed in said case, which said motion is in words and figures following, to-wit:

United States Circuit Court, District of Nebraska.

MASON CITY & FORT DODGE RAILROAD COMPANY, Complainant,
*vs.*
UNION PACIFIC RAILROAD COMPANY, Defendant.

*Motion.*

Comes now the above named complainant and moves the court that an order be entered herein, reinstating the order heretofore on the 14th of January entered herein, granting to the complainant herein, the right to amend its bill of complaint herein.

F. B. KELLOGG,
J. M. WOOLWORTH,
W. D. McHUGH,
*Solicitor- for Complainant.*

Endorsed: Filed Feb. 11, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, to-wit: at the November, 1902, term of said court, and on the 16th day of February, 1903, the following proceedings were had and done in said case, as appears of record on Journal No. 2 of said court, had on said day, to-wit:

MASON CITY & FORT DODGE RAILWAY CO.
*vs.*
UNION PACIFIC RAILROAD CO. } No. 55, — V.

Leave is hereby given to complainant to amend its bill as stated in the motion; defendant excepts to the leave to amend, but does

not object to the amendment being by interlineation rather than by separate bill.

This cause came on further to be heard on the demurrer to the bill and defendant states in open court that it submits its demurrer to the bill on the sole ground that the bill does not show that at the time it was filed that plaintiff had become a domestic corporation of Nebraska, and withdraws from the consideration of the court any other objection to the bill. After due consideration thereof, and being fully advised the court overrules said demurrer; to which the defendant excepts, and it is hereby given leave to answer herein on or before March 9th, 1903.

Thereupon afterwards, to-wit: on the 9th day of March, 1903, an answer was filed in said case, which said answer is in words and figures following, to-wit:

This answer is entitled Mason City & Fort Dodge Railroad Company, complainant, *vs.* Union Pacific Railroad Company, defendant.

This answer was printed and has been certified to and identified by the clerk of this court, with his signature thereto, pages 1 to 35 inclusive.

Thereupon afterwards, to-wit: on the 11th day of March, 1903, replication was filed in said case, which said replication is in words and figures following, to-wit:

In the Circuit Court of the United States, District of Nebraska.

MASON CITY & FORT DODGE RAILROAD COMPANY, Complainant,
*vs.*
UNION PACIFIC RAILROAD COMPANY, Defendant.

*Replication.*

The replication of Mason City & Fort Dodge Railroad Company, complainant, to the answer of Union Pacific Railroad Company.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto, saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things,

this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MASON CITY & FORT DODGE
RAILROAD COMPANY,
By F. B. KELLOGG,
J. M. WOOLWORTH,
W. D. McHUGH,
*Its Solicitors.*

F. B. KELLOGG,
J. M. WOOLWORTH,
*Of Counsel.*

Endorsed: Filed Mar. 11, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, to-wit: at the November, 1902, term of said court, and on the 24th day of March, 1903, the following order was signed and filed in said case, and entered of record on Journal No. 2 of said court, to-wit:

MASON CITY & FORT DODGE RAILROAD COMPANY, Complainant,
*vs.*
UNION PACIFIC RAILROAD COMPANY, Defendant.

Upon the application by the counsel of the complainant in the above entitled cause, it appearing that said cause is at issue on bill and answer and replication, it is therefore

Ordered that Charles W. Pearsall, of the city of Omaha and State of Nebraska, be, and he hereby is designated and appointed by the court as special examiner, to take and report to the court the evidence adduced or offered by the respective parties, with full authority as such special examiner, according to the rules and practice in such case made and provided; that said examiner give immediate notice by mail to counsel of the respective parties of his appointment herein, and of the time and place when he will attend for the purpose of hearing such testimony as may be adduced, and that notice be given by the respective counsel or solicitors to the opposite counsel or solicitors, or party, by mail, or personally, of the time and place of the examination, for such reasonable time as the examiner may fix or order in each case; that said examiner may, when necessary or convenient for the respective parties, continue said hearing from time to time by order made and entered during any regularly appointed or noted hearing had hereunder; that said examiner may, in his discretion, when necessary or convenient for the respect-

ive parties or witnesses, hold such hearings or any thereof, and receive testimony in behalf of either party at such times and such places, within or without the district of Nebraska, as he may designate and appoint by giving special notice to the respective parties or their solicitors, or by order made and entered at any regularly appointed or noted hearing held hereunder, notice of such time and place of hearing also to be given by the respective counsel or solicitors to the opposite counsel or solicitors or parties as provided by this order; that all testimony adduced pursuant hereto be taken in the ordinary manner under oath and when completed, be reported by said examiner together with all and several the proceedings had before him to this court, and filed with the clerk thereof in accordance with the rules and practice of this court.

By the court:

W. H. MUNGER, *Judge.*

Dated March 24th, 1903.

Endorsed: Filed Mar. 24, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, to-wit: at the November, 1902, term of said court, and on the 30th day of March, 1903, the following order was signed and filed in said case, and entered of record on Journal No. 2 of said court, to-wit:

MASON CITY & FORT DODGE RAILROAD COMPANY, Complainant,
vs.
UNION PACIFIC RAILROAD COMPANY, Defendant.

*Order.*

On application of the above named complainant, the defendant consenting thereto, it is

Ordered, that unless otherwise specially ordered, five days' notice of the time and place of the examination of witnesses in the above entitled cause, shall be given by the respective solicitors to the opposite counsel or solicitor or party.

Dated this 30th day of March, 1903.

CHAS. W. PEARSALL,
*Special Examiner in the Above Entitled Cause.*

Endorsed: Filed Mar. 30, 1903. Geo. H. Thummel, clerk.

(Introduction to testimony.)

Thereupon afterwards, to-wit: on the 20th day of June, 1903, volumes I and II of testimony taken before referee, were filed in said case, which said testimony is in words and figures following, to-wit

The evidence, testimony and depositions in this case *was* filed on June 20, 1903, consisting of two printed volumes, volume I covering pages 1 to 536, inclusive, and volume II pages 537 to 1077, inclusive, and certified to by the Honorable W. H. Munger, judge of this court, and which has been certified to and identified by the clerk of this court with his official signature thereto.

Thereupon afterwards, to-wit: at the May, 1903, term of said court, and on the 5th day of August, 1903, the following proceedings were had and done in said case, as appear of record on Journal No. 2 of said court, had on said day, to-wit:

MASON CITY & FORT DODGE RAILROAD COMPANY
*vs.*
UNION PACIFIC RAILROAD COMPANY.
} No. 55, Doc. V.

This cause coming on for hearing, the same is fully argued by the solicitors for the respective parties, duly submitted on the pleadings and proofs, and by the court taken under advisement.

Thereupon, upon the 19th day of August, 1903, memorandum opinion was filed in said case, which said opinion is in words and figures following, to-wit:

United States Circuit Court, District of Nebraska.

MASON CITY & FORT DODGE RAILROAD COMPANY
*vs.*
UNION PACIFIC RAILROAD COMPANY.
} No. 55, Docket "V."

Frank P. Kellogg, Woolworth & McHugh and Cardenio A. Severance, for complainants.
W. R. Kelly, John N. Baldwin and Edson Rich, for respondents.

*Memoranda Opinion.*

MUNGER, *D. J.*:

By an act of Congress of date July 1st, 1862, (volume 12 Stats. 489), the Union Pacific Railroad Company was incorporated with authority to construct and operate a line of railroad from a point to be fixed by the President of the United States on the western boundary of the State of Iowa to the western boundary of the State of Nevada, which act was amended by Congress July 2nd, 1864,

(volume 13, Stats., 356). Under the provisions of these acts said railroad was constructed from the initial point designated by the President of the United States on the western boundary of the State of Iowa. Between the State of Iowa and the then Territory of Nebraska to the west flowed the Missouri river, which was, for several years, crossed by said railroad by means of a ferry. Desiring to construct a bridge across the Missouri river, and not having sufficient means for that purpose, said railroad company applied to Congress for authority to issue its mortgage bonds upon the bridge and its approaches for that purpose, pursuant to which request Congress passed an act of date February 24th, 1871, (volume 16, Statutes, 430,).

On January 26th, 1880, said Union Pacific Railroad Company consolidated with certain other railroads and formed one consolidated company under the name of the Union Pacific Railway Company, such consolidated company succeeding to all the property and rights of said Union Pacific Railroad Company and assuming all of its burdens and obligations.

May 1st, 1880, the said Union Pacific Railway Company and the Chicago, Rock Island and Pacific Railway Company entered into a contract by the terms of which the said Chicago, Rock Island and Pacific Railway Company was granted the right for a term of nine hundred and ninety-nine years to use the said bridge and approaches across the Missouri river from Council Bluffs to South Omaha for the movement and operation of its engines, cars and trains between said points. A similar contract was entered into on the 30th day of April, 1890, between said Union Pacific Railway Company and the Chicago, Milwaukee and St. Paul Railway Company. After the parties had operated and acted under said contracts for a period of time, said Union Pacific Railway Company repudiated the contracts upon the claimed grounds that it was *ultra vires*, being a contract not within the power and authority of the Union Pacific Railway Company under its charter to enter into. Suits were thereupon instituted by the Chicago, Rock Island & Pacific Ry. Co. and the Chicago, Milwaukee & St. Paul Railway Co., for the specific performance of said contracts, which actions resulted in a decree being entered by this court as prayed (47 Fed., 15). An appeal was taken to the circuit court of appeals and the decree affirmed (51 Fed., 309), and on appeal to the Supreme Court was again affirmed (163 U. S., 564).

Commencing in 1893 various proceedings were had seeking a foreclosure of various mortgages which had been given pursuant to the provisions of the said several acts of Congress before specified. Such proceedings were had that said mortgages were foreclosed and all of the property and franchises owned and controlled by said

Union Pacific Railway Company were sold under the decree of foreclosure, including the bridge, its approaches and the tracks in question to —— —— as trustees.

Whereupon the present Union Pacific Railroad Company, respondent in this action was organized under the laws of the State of Utah, and became and now is the owner of the property and franchises so sold at such foreclosure sale.

After its organization and acquiring of the property, the present Union Pacific Railroad Company entered into contracts whereby the Chicago, Rock Island and Pacific Railway Company and the Chicago, Milwaukee and St. Paul Railway Company and the Chicago & Northwestern Railway Company and other roads are given the use of said bridge, its approaches and tracks, over which the trains of said several railroads are run and operated between the cities of Council Bluffs, Iowa, and South Omaha, Nebraska.

The complainant is a corporation owning and operating a railroad having its present western terminus at Council Bluffs, in the State of Iowa, and seeks to connect with and use the said bridge, approaches and tracks of respondent, between the said city of Council Bluffs, and South Omaha, Nebraska, upon the same terms and conditions as a like use is granted to the other roads.

Respondent refusing to grant such use to complainant, this action was brought asking for the mandatory order of this court, requiring respondent to grant to complainant the use of said bridge and tracks between Council Bluffs and South Omaha, on the same terms and conditions as are given such other railroad companies.

On behalf of complainant it is asserted that it is entitled to the relief asked.

1st. Because the right is granted by the said act of Congress of February 24th, 1871.

2nd. Because of the terms of a certain tripartite agreement entered into between the city of Omaha, the county of Douglas and said Union Pacific Railroad Company and shown by what is known as the Saunders' deed of date —— and introduced in evidence.

Respondent denies that the act of Congress of February 24th, 1871, required the original Union Pacific Railroad Company to afford to complainant the same use of its bridge and tracks as it gave to other railroad companies, and further, if it did that the title it, (respondent) acquired by the foreclosure sale was free from any such servitude and that it is free to contract with such companies for the use of the bridge and tracks as it may see fit, and further, that complainant has no such rights under the tripartite agreement embraced within the Saunders' deed.

Counsel for complainant contend that its rights under the act of

1871 to the use of said bridge and tracks as against the original Union Pacific Railroad Company and the consolidated company, was adjudicated and settled in the Rock Island case, *supra*.

If that be so, if the act has been so interpreted by the court — appeals and the Supreme Court, then what is the proper construction of the act, is not an open one for this court, but those decisions must be followed.

In the Rock Island case the validity of the contract then under consideration was sustained in this court in an opinion by Mr. Justice Brewer based upon the sole consideration that at common law and without expressed statutory authority one railroad company could enter into a valid lease with another railroad company for the joint use of its tracks, when such joint use did not impair the power of the lessor company to perform the functions and duties which it owed to the public or the sovereignty from which it derived its authority.

The circuit court of appeals through Judge Sanborn, approved the doctrine thus announced by Justice Brewer, and as a further ground for holding the contract valid, construed the bridge act of 1871 in the light of other similar legislation by Congress, and held that statutory authority was given the Union Pacific to enter into such a contract, while Judge Sanborn did not in express terms say that the first section of the act of July 25th, 1866, (14 Stat. 444) was applicable to the bridge act of 1871, and hence, to be read into it as a part thereof, yet a careful reading of his opinion leaves no doubt in my mind that such was the understanding of that court in its interpretation of the 1871 act. If we exclude the first section of the act of July 25, 1866, from the act of 1871, as not applicable thereto, then it is impossible to find express statutory authority for the Union Pacific Company to have made the contract with the Rock Island Company, and I am clearly of the opinion that the holding of the circuit court of appeals was not only that the contract in question was valid as the proper exercise of the common law right to contract, but equally as authoritative that the right was given under a proper construction and interpretation of the bridge act of 1871, and that the first section of 1866 act was applicable to the act of 1871.

While the court of appeals in construing the act of 1871 with the first section of the act of 1866 as applicable thereto, decided that authority was therein given to enter into the contract then in question, they did not — express language say that the act made it mandatory upon the Union Pacific Company to grant the use of said bridge and tracks to other railroad companies, that court took one step in advance of that taken by Justice Brewer, and held that the statute au-

thorized the making of the contract. When the case reached the Supreme Court, the Chief Justice in pronouncing the decision of the majority, took a step in advance of that taken by the circuit court of appeals, and said:

"For the provisions of the Pacific Railroad acts, related to the bridge over the Missouri river, its construction and operation imposed on the Pacific Company the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and tracks between Council Bluffs and Omaha, and we think South Omaha was included."

In support of the correctness of this pronouncement the bridge acts of 1871 and 1866 were considered in connection with other similar bridge acts passed by Congress. The argument advanced that section 1, of the 1866 act was inapplicable to the act of 1871, that the reference in said act of 1871 to the 1866 act should be confined to section- 2 and 3, was expressly disapproved. It is however, urged with much force and persistency that the quoted utterance of the Chief Justice is not authority, but dicta merely. Considering the question as to what expressions of opinion are to be treated as authority, Chief Justice Marshall in Cohen's *vs.* Virginia, 6 Wheaton, 264–399, said:

"It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case they may be respected, but should not control the judgment in a subsequent suit when the very point is presented for decision.

"The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing in all other cases is seldom completely investigated."

Applying this maxim to the decision of the Supreme Court for the purpose of determining what expressions are authoritative, we are to consider what was the question before the court, what was it called upon to decide. The question before the court and upon which it was asked to pronounce its judgment was the validity of a contract which had been made by the Union Pacific Company, the validity of the contract having been challenged on the alleged ground that it was beyond the power of the Union Pacific Company to make such a contract.

The court held that the contract was valid for the reasons:

1. That the particular contract was one proper to be made under the common law right to contract.

2. That the contract was authorized under the bridge act of 1871, that act by reference embracing the first section of the act of 1866.

These two propositions are authority within the maxim quoted. They were both proper questions to be considered and determined for a correct adjudication of the question before the court. It, perhaps, was unnecessary to place the validity of the contract upon both grounds: its validity upon either ground would have been sufficient. That, however, does not render the decision less authoritative on both questions. The question as to whether the Union Pacific could be required against its will to enter into any character of a contract with another railroad company for the use of the bridge and tracks was not before the court in the Rock Island case. It was not necessary to be considered for a correct determination of the question submitted, and hence, the expression before quoted in the opinion of the Chief Justice that the bridge act imposed upon the Union Pacific Company the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and tracks between Council Bluffs and South Omaha, is not authority, but dicta, which while it should be respected, is not to control the judgment in this case. It having been authoritatively decided by the circuit court of appeals and the Supreme Court that the first section of the act of 1866 is applicable to the act of 1871, and hence to be read as a part of said 1871 act, it is left for the court in this case to determine the rights of complainant thereunder.

The section reads as follows:

"That it shall be lawful for any person, persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose, to build a bridge across the Mississippi river at Quincy, Illinois, and to lay on and; over said bridge railway tracks, for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point; and that when constructed all trains of all roads terminating at said river or opposite said point shall be allowed to cross said bridge, for reasonable compensation to be made to the owners of said bridge, under the limitations and conditions hereinafter provided."

The language of the section is specific and unambiguous. It says: "That when constructed all trains of all roads terminating at said river at or opposite said point shall be allowed to cross said bridge for reasonable compensation to be made to the owners of said bridge." It does not simply give to the company constructing the bridge authority to permit the trains of other roads terminating at the river to cross said bridge, but it expressly says "all trains of all roads terminating at said river at or opposite said point shall be allowed to cross said bridge for reasonable compensation to be made to the owners of said bridge." This is a mandatory provision which was enforcible against the Union Pacific Railway Company and

equally enforcible against the respondent unless its title and rights acquired through the foreclosure proceedings before referred to were freed by such proceedings from the obligations thus imposed. It is true that the statute imposes the payment of a reasonable compensation for the use, but it is not shown or claimed that the compensation and terms imposed upon the roads which are given the use is not reasonable, and I think the act required that all roads shall be treated alike in this respect.

The amandatory act of 1864, before referred to, expressly authorized the construction of a bridge across the Missouri river, (sec. 9) and by section 10 of the act, the railroad company was empowered to issue its bonds and mortgage upon the road on the completion of each section, to an amount not exceeding the amount of the bonds of the United States, such bonds and mortgage to be a lien prior and superior to that of the United States. Under this provision the railroad company issued its bonds and mortgage upon the property then owned as well as upon that to be acquired, which mortgage was given prior to the act of 1871, prior to the construction of the bridge and prior to the mortgage given upon the bridge under the 1871 act. The mortgage thus given was one of the mortgages upon which the decree was based in the foreclosure proceeding, and it is urged on the part of the respondent that such mortgage and the interests of the holders of the bonds secured thereby, was not and could not be effected by the act of 1871, and hence, the title acquired through the foreclosure sale thereunder is likewise unaffected by the act of 1871.

It is to be borne in mind that at the time this mortgage was given the bridge had not been constructed, the company at that time simply possessing the naked right to acquire the bridge and approaches. Unable to secure the fruits of such naked right, because of lack of financial means, it applied to Congress for permission to acquire the means by a mortgage upon the bridge to be constructed. Congress granted this permission by imposing certain conditions, among which were the obligations of section 1 of the act of 1866. And this, I think, was in effect an amendment of the charter of the company which Congress had reserved unto itself the right to make.

While, as I say, the right to construct the bridge was not dependent upon the act of 1871, the right to give the mortgage by which the means were secured to construct the bridge was dependent upon that act. The provisions of the act and its conditions were accepted as evidenced by the mortgage given upon the bridge. The result then was that this bridge property was acquired by the railroad company burdened with certain conditions, among which was the provisions of section 1 of the act of 1866, making it amandatory as

I have said, to permit other companies to run their trains over said bridge for just compensation.

It needs no argument to illustrate the proposition that a mortgage does not attach as a lien before the acquisition of the property, and that where the property is acquired subject to conditions, the lien of the mortgage is also subject to such conditions. The mortgage covered not only the right of way which the company had at the time the mortgage was given, but such as it should subsequently acquire in the construction of the road. Supposing that subsequent to the giving of the mortgage the company acquired the right of way over the land of A, subject to the easement of a private crossing by A, or assigns. It certainly would not be contended, I think, that the mortgage, when attached to this right of way over the land of A, was not subject to such easement.

During the foreclosure proceedings the question as to the priority of the mortgage referred to and the mortgage given upon the bridge to procure the means for its construction came before Judge Sanborn for his consideration. Passing upon that question, he said:

"It is clear that when this mortgage was made neither the bondholders secured by the general first mortgage nor the Government had any lien upon the bridge or upon the bridge division of the present railroad, because neither of these were then in existence. It was equally plain that neither the Government nor these bondholders expected or intended that the security which they permitted the railroad company to offer in order to obtain the money to construct this bridge, would be subordinate to their lien. The aggregate amount of the encumbrance upon the railroad as it was then constructed, was more than $54,000,000.00. Neither the Government nor the holders of the first mortgage bonds could have intended or supposed that a third lien for $2,500,000.00 on four miles of this railroad, subject to their liens for $54,000,000.00, would induce purchasers to take these bridge mortgage bonds. On the other hand it was plainly upon the theory that the mortgage of April 1st, 1871, would constitute a first lien upon the bridge and its approaches, that Congress authorized, and the first mortgage bondholders acquiesced in its execution, and that the holders of the bridge bonds purchased them and furnished the funds which built the bridge. It would be unjust, inequitable and a violation of the faith upon which the bridge bonds were sold, to permit the first mortgage bondholders or the Government now to displace the lien of the bridge bonds, to destroy their security, and to appropriate to themselves the valuable improvement produced by the funds realized from the sale of these bridge bonds.

The mortgage of April 1st, 1871, must therefore be held to be a

first lien upon the bridge division of the Union Pacific Railroad Company." (Volume 1 of evidence, page 352.)

It was argued at the hearing that this decision of Judge Sanborn was based upon the finding by him that the first mortgage bondholders had acquiesced in the execution of the bridge mortgage as a first lien. If the bridge mortgage was subject to conditions and the first mortgage bondholders acquiesced in the giving of said bridge mortgage subject to such conditions, and by reason thereof the first mortgage became subject to said bridge mortgage, then the lien of such mortgage being subsequent to and inferior as a lien to the bridge mortgage, it was subject to the same conditions as were imposed upon such bridge mortgage.

It is not claimed by Judge Sanborn in the opinion referred to that such bridge mortgage became the first and paramount lien upon any principle of estoppel upon the part of the first mortgage bondholders; it is upon the proposition that as the property had not been acquired by the railroad company, that Congress intended that such bridge mortgage should be the first and paramount mortgage and that the holders of the first mortgage bonds, he says, could not have intended or supposed that the bridge mortgage was to be subject to prior mortgages, but that the theory upon which the Government and all parties acted, was that the bridge mortgage from which the funds to construct the bridge were realized, was the first and paramount lien. That being so, and the bridge having been acquired by the railroad company subject to the conditions imposed by the act, and the lien of the mortgage not attaching until the acquisition of the property, it is clear that such mortgages were subject to the conditions imposed by the act and that the purchasers under the foreclosure decree took no greater or superior rights than were held by the mortgagees.

But it is argued that the decree of foreclosure did not impose the burden of the bridge mortgage upon the purchaser, but only the *indebtedness* secured thereby. I fail to observe any material distinction in that respect. Certainly, all that the holders of the bridge bonds could expect or all that they were entitled to was payment of their mortgage indebtedness. The question is not what rights the holders of that mortgage obtained, but whether the conditions upon which that mortgage was authorized, (and which I think constituted an amendment of the charter to that extent) were superior to the rights of the other mortgagees, and I think such conditions were superior to the estate of any of the mortgagees. If so, then persons entitled to the benefits conferred by such conditions who were not parties to the foreclosure proceedings were not affected thereby, notwithstanding any recitals which the decree contained.

For these reasons I hold that complainant possesses the same rights as against respondent to enforce the provisions of the act of 1871 as it possessed against the original and the consolidated company.

This conclusion renders it unnecessary to consider the rights of the parties under the triparte agreement embraced in the Saunders act.

A decree will be entered for complainant. Counsel for complainant will prepare draft of decree, submit same to counsel for respondent and the same may be presented to the court on Thursday, the 13th, at 10 o'clock a. m., when objections will be heard as to the form of the decree.

Endorsed:—Filed Aug. 19, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, to-wit: at the May, 1903, term of said court, and on the 12th day of August, 1903, a decree was signed and filed in said case, and entered of record on Journal No. 2, of said court, to-wit:

MASON CITY & FORT DODGE RAILROAD COMPANY, C plainant,
*vs.*
UNION PACIFIC RAILROAD COMPANY, Defendant.

This day came the complainant, The Mason City & Fort Dodge Railroad Company, by its solicitors and counsel, Frank B. Kellogg, James M. Woolworth, W. D. McHugh and C. A. Severance, and the defendant, The Union Pacific Railroad Company, by John N. Baldwin, its solicitor and counsel, and the said cause coming on to be heard upon the pleadings and proofs, and after hearing the same, and the arguments of the respective solicitors and counsel, it is

Ordered, adjudged and decreed: That the complainant, its successors, lessees and assigns by virtue of the matters and things alleged in the bill of complaint, and sustained by the proofs at the hearing, is entitled to be admitted into the full, equal and joint use of the main and passing tracks of the Union Pacific Railroad Company, now located and established or which may hereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stock Yards railroad and the other railro-ds connecting with the Union Pacific railroad at south Omaha, in the State of Nebraska, *including* the bridge over said tracks extend- across the Missouri between the cities of Council Bluffs Iowa, and Omaha, Nebraska; also the connection with, and the tracks pertaining thereto, of the general passenger

station of the said Union Pacific railroad in Omaha, and said passenger station and all tracks and facilities connected therewith; also a connection with the side or spur track leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made; also a connection with the side tracks in Omaha on which to receive from and deliver to said Union Pacific Railroad Company freight which may be handled through the warehouses, or may be switched by the said Union Pacific Railroad Company; also the connections with the Union Stock Yards tracks in south Omaha and with the tracks of all other railway companies, which now or may hereafter connect at or near south Omaha, with the tracks of the Union Pacific Railroad Company hereinbefore described, each and all, to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company and the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, Rock Island & Pacific Railway Company as appears by the contracts in evidence in this case, and the depot contract, and the supplemental contract between the same parties, being Exhibits Nos. 6 and 7, attached to the bill of complaint herein, without preference or discrimination.

That the Mason City & Fort Dodge Railroad Company is entitled to connect its tracks with the said tracks of the Union Pacific Railroad Company at the point in Council Bluffs, and in the manner shown upon the Complainant's Exhibit No. 4*d*, and forever maintain and operate the same.

That the Mason City & Fort Dodge Railroad Company is entitled to make such connections between tracks which it now owns, or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company, as shall be necessary or convenient in the operation of its own line, or as may be necessary or convenient in its business as a common carrier, and forever maintain and operate such connection. That if said Mason City & Fort Dodge Rairroad Company and said Union Pacific Railroad Company cannot agree upon the points at which such connections shall be made, or to the manner of making the same, application may be made to the court from time to time in this case for supplemental decrees fixing said points of junction, and the manner of making such connections. It is further

Ordered, adjudged and decreed, that the defendant, its officers, agents, attorneys and employees be, and they hereby are, forever enjoined, prevented and restrained from interfering in any way with said full, equal and joint use of said property as aforesaid, by the complainant, its successors, lessees and assigns, and the right to

make said connections as aforesaid; and they are ordered, required and mandatorily enjoined to permit the free use and right as hereinbefore directed and stated, the compensation to be paid to the defendant to commence to accrue from the date the complainant commences the use of said property. It is further

Ordered, adjudged and decreed, that a writ of injunction issue out of this court, enjoining the said defendant, its officers, agents, attorneys and employees from interfering in any way with the said full, equal and joint use of said property as in this decree allowed, and mandatorily enjoining them to permit the free use and right as hereinbefore directed and stated.

This court further reserves the power and right and jurisdiction to make such further order and decree as become necessary and proper in the premises in the future.

That complainant is entitled to its costs and disbursements herein, to be taxed, and defendant at the time and in open court prayed for an appeal, which is by this court allowed.

W. H. MUNGER, *Judge.*

Dated Omaha, August 12, 1903.

Endorsed: Filed Aug. 12, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, towit: on the 17th day of August 1903, an assignment of errors was filed in said case, which said assignment is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

MASON CITY & FORT DODGE RAILROAD COMPANY, Complainant,
*vs.*
UNION PACIFIC RAILROAD COMPANY, Defendant.

*Assignment of Errors.*

And now on this 17th day of August, 1903, came the defendant, Union Pacific Railroad Company, by its solicitors, W. R. Kelly and John N. Baldwin, and they say that there is manifest error in the records, proceedings and decree in said cause, and that the decree is erroneous and against the just rights of said defendant for the following reasons:

I.

That the court erred in finding upon the issues joined in favor of the complainant.

II.

That the court erred in not finding upon the issues joined in favor of the defendant.

III.

That it was against the just rights of the defendant to hold and decide that the complainant was entitled, under the acts of Congress of July 1st, 1862, July 2d, 1864, July 25th, 1866, and February 24th, 1871, to go over and across the bridge of the defendant between the cities of Council Bluffs, Iowa, and Omaha, Nebraska, and that under said acts it was entitled to the full, equal and joint use with other railroads, of the main and passing tracks of the defendant located or established or to be located or established between the city of Council Bluffs, in the State of Iowa, and the city of South Omaha, in the State of Nebraska, and also the terminal facilities mentioned in the decree, and the court erred in so finding and deciding.

IV.

That it was against the just rights and erroneous for the court to hold and decide that under the acts of Congress of July 1st, 1862, July 2d, 1864, July 25th, 1866, and February 24th, 1871, referred to, that the complainant was entitled to the full, equal and joint use of the bridge across the Missouri river, main, side and passing tracks, passenger depot, spur tracks and connecting tracks, with the defendant, and the court erred in so finding and deciding.

V.

That it was against the just rights of the defendant and erroneous for the court to hold and decide that the complainant possessed the same right as against the defendant to enforce the provisions of the act of Congress of the United States of February 24th, 1871, as it possessed against the old The Union Pacific Railroad Company, the congressional corporation, and The Union Pacific Railway Company, and the court erred in so finding and so deciding.

VI.

That it was against the just rights of the defendant and erroneous for the court to hold and decide that the defendant did not under the foreclosure of the first mortgage of March 1st, 1865, acquire all of the properties of the old company, to-wit: the Union Pacific Railroad Company, a congressional corporation, free and clear of any lien, charge or duty of or to the United States of America under any

act of Congress of the United States except as specified in the decree of foreclosure entered in said cause in the circuit court of the United States for the district of Nebraska, July 9th, 1897.

VII.

That it was against the just rights and erroneous for the court to refuse to hold and decide that the act of the Congress of the United States, of date February 24th, 1871, did not require The Union Pacific Railroad Company, this defendant, to permit the complainant to use its bridge across the Missouri river between the cities of Council Bluffs, in the State of Iowa, and South Omaha, in the State of Nebraska, together with all tracks, side tracks, spur tracks, facilities, etc., and the court erred in refusing and failing to so find and decide.

VIII.

That it was against the just rights of the complainant and the court erred in adjudging and decreeing that under the Saunders deed and the tripart-e agreement, and under the acts of the Congress of the United States, of July 1st, 1862, July 2d, 1864, July 25th, 1866, and February 24th, 1871, there was secured to the complainant the full, equal and joint possession and use of the main and passing tracks and other premises described in complainant's bill of complaint, and in the decree, and that the rights, privileges, uses and properties referred to in said bill of complaint and in the decree were secured to the said complainant under any contract, deed or acts of Congress of the United States.

IX.

That it was against the just rights of the defendant and the court erred in adjudging and decreeing that there was equity in the complainant's bill of complaint, and that the complainant was entitled to the relief prayed for.

X.

That it was against the just rights of the defendant and the court erred in ordering, adjudging and decreeing that the complainant was entitled under the acts of Congress of the United States to use, occupy and enjoy the premises referred to in the bill of complaint and the decree to South Omaha, Nebraska.

XI.

That it was against the just rights of the defendant and erroneous for the court to refuse to hold and decree that no advantage would

be taken by the complainant of the conditions found in the Alvin Saunders deed, because,

(*a.*) Saunders was a naked trustee, and the city of Omaha is the real party in interest.

(*b.*) It is a deed in fee to Union Pacific Railroad Company, with a condition subsequent in favor of the city of Omaha, the real party in interest.

(*c.*) No one but the real party in interest has the right to insist upon the performance of the conditions or enforce the penalty for failure to perform.

(*d.*) The limitations and conditions in the Saunder's deed are invalid and illegal, and for this reason Union Pacific Railroad Company took an estate in fee free from all conditions and limitations.

XII.

That it was against the just rights of the defendant and erroneous for the court to refuse to hold that the limitations and reservations in the deed of Saunders, trustee, to Union Pacific Railroad Company were invalid and not binding upon this defendant.

XIII.

That it was against the just rights of the defendant and erroneous for the court to refuse to hold that the city of Omaha was the real party in interest, and for whose benefit the contract recited in the Saunders deed was made, and the complain-t would only be incidentally benefited by the enforcement of said contract, and therefore it is not entitled to maintain this suit under said contract.

XIV.

That it was against the just rights of the defendant and erroneous for the court to refuse to hold and decide that no necessity exists for the use of the bridge across the Missouri river and the other properties referred to in the bill of complaint and in the decree, by the complainant for its entrance into the city of Omaha, Nebraska.

XV.

That it was against the just rights and erroneous for the court to refuse to hold and decide that in no event and under no construction which could be placed upon the Saunder's deed and the act of the Congress of the United States of February 24th, 1871, could there be any right to the use of the tracks beyond Twentieth street in the city of Omaha, Nebraska, nor could there be any right to the

tion of the tracks beyond Twentieth street in the city of Omaha, under the acts of July 1st, 1862, July 2d, 1864, and July 25th, 1866, and the court erred in refusing so to hold.

XVI.

The court erred in ordering and decreeing that the complainant — entitled to admission, and should be admitted into "the full, equal and joint use of the main and passing tracks of Union Pacific Railroad Company, now located and established, or which may hereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, State of Iowa, to a connection with the Union Stock Yards railroad, and the other railroads connecting with the Union Pacific railroad at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri river, between the cities of Council Bluffs, Iowa, and Omaha, Nebraska," or any part thereof.

XVII.

The court erred in ordering and decreeing that the complainant was to be admitted to "the connection with, and the tracks pertaining thereto, of the general passenger station of the said Union Pacific railroad in Omaha, and said passenger station, and all tracks and facilities connected therewith."

XVIII.

The court erred in ordering and decreeing that the complainant was entitled to "a connection with the side or spur tracks leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereinafter made."

XIX.

The court erred in finding and decreeing that the complainant should be admitted to the use of "a connection with the side tracks in Omaha, on which to receive from and deliver to said Union Pacific Railroad Company freight which may be handled through the warehouses, or may be switched by said Union Pacific Railroad Company."

XX.

The court erred in finding and decreeing that the complainant was entitled to admission to "the connections with the Union Stock Yards tracks in South Omaha, and with the tracks of all other rail-

way companies, which now or may hereafter connect at or near South Omaha, with the tracks of the Union Pacific Railroad Company" in said decree described, "each and all to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company, and the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, Rock Island & Pacific Railway Company, as appears by the contracts in evidence in this case, and the depot contract, and the supplemental contract between the same parties, being Exhibits Nos. 6 and 7, attached to the bill of complaint herein, without preference or discrimination."

XXI.

The court erred in finding and decreeing that the complainant was entitled to the use, or the right to use, and occupy any of the said premises of this defendant, upon the terms set forth in said decree, of any of said several contracts, or any of them.

XXII.

The court erred in finding and decreeing that the complainant was entitled to "connect its tracks with the said tracks of the Union Pacific Railroad Company at the point in Council Bluffs, and in the manner shown upon the Complainant's Exhibit No. 4*d*, and forever maintain and operate the same," or otherwise.

XXIII.

The court erred in finding and decreeing that the complainant was "entitled to make such connections between tracks which it now owns, or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company, as shall be necessary or convenient in the operation of its own line, or as may be necessary or convenient in its business as a common carrier, and forever maintain and operate such connection."

XXIV.

The court erred in finding and decreeing that the defendant should be prevented and restrained from interfering in any way with said full, equal and joint use of said property as aforesaid, by the complainant, its successors, lessees and assigns, and the right to make said connections.

XXV.

The court erred in ordering and requiring and mandatorily enjoining, this defendant to permit the free use and right of said property as in said decree directed and stated.

XXVI.

The court erred in ordering and decreeing that the complainant was entitled to any use of any of the defendant's said property in said decree described, without this defendant's consent.

XXVII.

The court erred in granting the relief prayed for, or any relief, because the complainant hath not by its charter corporate power or authority to acquire or hold any right, title or interest in any of this defendant's property in the State of Nebraska.

XXVIII.

The court erred in granting to the complainant the right to use any of this defendant's property in the State of Nebraska, because the complainant hath no corporate power or authority to use or exercise any dominion over, such property in the State of Nebraska.

XXIX.

That it was against the just rights of the defendant and the court erred in adjudging and decreeing that the bill of complaint of the complainant should not be dismissed at its costs.

Wherefore, the defendant prays that the decree may be reversed, and that said court may be directed to dismiss the bill of complaint herein.

UNION PACIFIC RAILROAD COMPANY,
By JOHN N. BALDWIN, *Its Solicitor.*

W. R. KELLY, *Of Counsel.*

Endorsed: Filed Aug. 17, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, to wit: on the 17th day of August, 1903, a petition for appeal was filed in said case, which said petition is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

MASON CITY & FORT DODGE RAILROAD COMPANY, Complainant,
vs.
UNION PACIFIC RAILROAD COMPANY, Defendant.

*Petition for Appeal.*

To the Hon. W. H. Munger, judge of the circuit court of the United States for the district of Nebraska:

The above named defendant, Union Pacific Railroad Company, conceiving itself aggrieved by the final decree made and entered on the 11th day of August, 1903, in the above entitled cause, does hereby appeal from said order and decree to the United States circuit court of appeals, for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the records, proceedings and papers upon which said order and upon which said decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the eighth circuit.

UNION PACIFIC RAILROAD COMPANY,
By JOHN N. BALDWIN, *Its Solicitor.*

W. R. KELLY, *Of Counsel.*

The above and foregoing petition and claim for appeal is hereby allowed, this 15th day of August, 1903.

W. H. MUNGER, *Judge.*

Endorsed: Filed Aug. 17, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, to-wit: on the 17th day of August, 1903, a bond was filed in said case, which said bond is in words and figures following, to-wit:

Know all men by these presents: That Union Pacific Railroad Company, as principal, and Wm. R. Kelly, and —— —— as sureties, are held and firmly bound unto the complainant, The Mason City & Fort Dodge Railroad Company, in the full and just sum of five hundred ($500.00) dollars to be paid to the said complainant, The Mason City & Fort Dodge Railroad Company, its attorneys, heirs, executors, administrators or assigns, to which payment well and truly to be

made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated the 17th day of August, 1903.

Whereas, lately in the circuit court of the United States for the district of Nebraska, in a suit pending in said court between Mason City & Fort Dodge Railroad Company, complainant, against Union Pacific Railroad Company, defendant, a decree was rendered against the defendant, Union Pacific Railroad Company, and the said defendant, Union Pacific Railroad Company, having obtained a writ of appeal, and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Mason City & Fort Dodge Railroad Company, citing and admonishing it to be and appear at the session of the United States circuit court of appeals for the eighth circuit at the city of St. Louis, Missouri, in said circuit on the 7th day of December, 1903.

Now the conditions of the above obligation is such that if the said Union Pacific Railroad Company shall prosecute the said writ of appeal to effect and answer all costs if it fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

UNION PACIFIC RAILROAD COMPANY,
By JOHN N. BALDWIN AND
WILLIAM R. KELLY, *Its Solicitors.*
W. R. KELLY, *Surety.*
——— ———, *Surety.*

Signed, sealed and delivered in the presence of
G. S. WARING.

Approved:

W. H. MUNGER, *Judge.*

Aug. 17th, 1903.

Endorsed: Filed Aug. 17, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, to-wit: on the 18th day of August 1903, precipe for transcript was filed in said case, which said precipe is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the Distric of Nebraska.

MASON CITY & FORT DODGE RAILROAD COMPANY, Complainant,
*vs.*
UNION PACIFIC RAILROAD COMPANY, Defendant.

*Precipe.*

To Mr. George H. Thummel, clerk of the circuit court of the Unite States for the district of Nebraska:

Pursuant to the appeal taken and allowed in the above entitle cause, please prepare and complete a copy of the transcript of reco from the circuit court of the United States for the district of N braska, of the following papers, to-wit:

Complainant's bill of complaint, as amended; the answer thereto replication; all papers, documents and motions filed in said caus together with all stipulations, depositions, certificate of evidenc journal entries, orders, opinion of the court, decrees, petition f appeal, assignment of errors, appeal bond, citation, and all oth papers filed, including the final decree made and entered in th above entitled cause of Mason City & Fort Dodge Railroad Com pany, against Union Pacific Railroad Company, complete for filin as the record of the circuit court of appeals of the United States f the eighth circuit.

UNION PACIFIC RAILROAD COMPANY,
By JOHN N. BALDWIN, *Its Solicitor.*

W. R. KELLY, *Of Counsel.*

Endorsed: Filed Aug. 18, 1903. Geo. H. Thummel, clerk.

Thereupon afterwards, to-wit: an appeal was duly allowed in sai case, and a citation issued thereon, which said citation was filed o the same date, with acceptance of service endorsed thereon, the fo lowing of which is a copy:

The United States of America to Mason City & Fort Dodge Railroa Company, Greeting:

You are hereby cited and admonished to be and appear in th United States circuit court of appeals for the eighth circui at the city of St. Louis, Missouri, sixty days from and after the da this citation bears date, pursuant to an appeal, filed in the clerk

office of the circuit court of the United States for the district of Nebraska, wherein Union Pacific Railroad Company is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger, judge of the district court of the United States for the district of Nebraska, this 17th day of August, in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
*United States District Judge for the District of Nebraska.*

Omaha, August 17th, 1903.

Due service of this citation is hereby accepted.

WOOLWORTH & McHUGH,
*Counsel for Appellee.*

UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

I, George H. Thummel, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify and return that the foregoing is a true and complete copy of the transcript of record of the pleadings, depositions, evidence, documents, exhibits, maps, stipulations, papers, motions, orders, decrees, petition for appeal, appeal bond, and other papers filed, and of the opinion of Hon. Wm. H. Munger, and all orders, and the final decree made and entered of record in the case of Mason City & Ft. Dodge Railroad Company vs. Union Pacific Railroad Company.

In testimony whereof I have hereunto set my hand, and have caused the seal of said court to be duly affixed this 24th day of August, 1903.

[SEAL.] GEO. H. THUMMEL,
*Clerk of the Circuit Court of the United States for the District of Nebraska,*
By JOHN NICHOLSON, *Deputy.*

(*Appearance for Appellant.*)

And on the twenty-ninth day of August, A. D. 1903, an appearance of counsel for the appellant was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

UNION PACIFIC RAILROAD COMPANY, Appellant,
vs.
MASON CITY AND FORT DODGE RAILROAD COMPANY. } No. 1975.

The clerk will enter *my* appearance as counsel for the appellant.
JOHN N. BALDWIN.
WILLIAM R. KELLY.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1975. Union Pacific R. R. Co., appellant, *vs.* Mason City and Fort Dodge R. R. Co. Appearance. Filed Aug. 29, 1903. John D. Jordan, clerk. John N. Baldwin, W. R. Kelly, counsel for appellant.

(*Appearance of Messrs. Woolworth & McHugh for Appellee.*)

And on the seventh day of September, A. D. 1903, the appearance of Messrs. Woolworth & McHugh, as counsel for the appellee, was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

UNION PACIFIC RAILROAD COMPANY, Appellant,
vs.
MASON CITY AND FORT DODGE RAILROAD COMPANY. } No. 1975.

The clerk will enter *my* appearance as counsel for the appellee.
JAMES M. WOOLWORTH.
WILLIAM D. McHUGH.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1975. Union Pacific Railroad Company, appellant, *vs.* Mason City and Fort Dodge Railroad Company. Appearance. Filed Sep. 7, 1903. John D. Jordan, clerk. James M. Woolworth, William D. McHugh, counsel for appellee.

(*Appearance of Mr. Frank B. Kellogg for Appellee.*)

And on the tenth day of September. A. D. 1903, the appearance of Mr. Frank B. Kellogg, as counsel for the appellee, was filed in the

clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

UNION PACIFIC RAILROAD COMPANY, Appellant,
*vs.*
MASON CITY AND FORT DODGE RAILROAD COMPANY. } No. 1975.

The clerk will enter my appearance as counsel for the appellee.
FRANK B. KELLOGG.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1975. Union Pacific Railroad Company, appellant, *vs.* Mason City and Fort Dodge Railroad Company. Appearance. Filed Sep. 10, 1903. John D. Jordan, clerk. Frank B. Kellogg, counsel for appellee.

(*Order Advancing Cause to Docket, September Term*, 1903.)

And on the seventh day of September, A. D. 1903, in the record of the proceedings of said circuit court of appeals is an order advancing cause to docket of September term, 1903, in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1903.

MONDAY, *September* 7, 1903.

UNION PACIFIC RAILROAD COMPANY, Appellant,
*vs.*
MASON CITY AND FORT DODGE RAILROAD COMPANY. } No. 1975.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause came on to be heard upon the motion of the appellant and the stipulation of the parties for an order to advance this cause and set the same for hearing at the present September term, 1903, at Denver.

On consideration whereof, and in pursuance of the stipulation of the parties, it is now here ordered by this court that this cause be, and the same is hereby, advanced to the docket of the September

term, 1903, at Denver, and is assigned for hearing at the foot of the call for Wednesday, September 16, 1903.

September 7, 1903.

(*Argument Commenced.*)

And on the twenty-first day of September, A. D. 1903, in the record of the proceedings of said circuit court of appeals is an entry in said cause in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1903.

MONDAY, *September* 21, 1903.

UNION PACIFIC RAILROAD COMPANY, Appellant,
*vs.*
MASON CITY AND FORT DODGE RAILROAD COMPANY. } No. 1975.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause having been called for hearing, it was ordered, upon application of counsel, that the time for argument be enlarged one hour to each side, thereupon, argument was commenced by Mr. John N. Baldwin for appellant and continued by Mr. Frank B. Kellogg for appellee, and the hour for adjournment having arrived further argument was postponed until tomorrow.

(*Order of Submission.*)

And on the twenty-second day of September, A. D. 1903, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1903.

TUESDAY, *September* 22, 1903.

UNION PACIFIC RAILROAD COMPANY, Appellant,
*vs.*
MASON CITY AND FORT DODGE RAILROAD COMPANY. } No. 1975.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause having been called for further hearing, argument was continued by Mr. Frank B. Kellogg and Mr. J. M. Woolworth for appellee and concluded by Mr. John N. Baldwin for the appellant. Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the twenty-ninth day of February, A. D. 1904, an opinion of said circuit court of appeals was filed in said cause, in the words and figured following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1903.

UNION PACIFIC RAILROAD COMPANY, Appellant,
*vs.*
MASON CITY & FORT DODGE RAILROAD Company, Appellee. } No. 1975. Appeal from the Circuit Court of the United States for the District of Nebraska.

Mr. John N. Baldwin (Mr. W. R. Kelly was with him on the brief) for appellant.

Mr. Frank B. Kellogg and Mr. James M. Woolworth (Mr. William D. McHugh and Mr. Cordenio A. Severance were with them on the brief) for appellee.

Before Sanborn and Van Devanter, circuit judges, and Hook, district judge.

*Syllabus.*

1. *Obiter dictum*—Declaration of duty of Pacific Company as to use of its Omaha bridge in 163 U. S. 586 is not an *obiter dictum*, but a controlling decision.—The declaration of the Supreme Court in Union Pacific Ry. Co. *v.* Chicago etc. Ry. Co., 163, U. S. 564, 586, that the provisions of the Pacific Railroad acts relating to the bridge over the Missouri river imposed upon the Pacific Company the duty of permitting the Rock Island Company to run its engines and trains over the bridge and tracks of the Pacific Company between Council Bluffs, Omaha and South Omaha was a controlling adjudication of the question and not an *obiter dictum*.
2. *Obiter dicta*—Decisions of each of two questions, either of which is sufficient to sustain the ultimate conclusion, are of binding force and not *obiter dicta*.—Where a court places its decision of the ultimate legal issue before it upon its decisions of two legal questions which were pertinent to the issue, debated at the bar, considered and determined in the opinion, the decision of either one of which is sufficient to sustain the determination of the ultimate issue, the decision of each of the two questions and of every pertinent legal question decided in reaching either decision, has the binding force of an adjudication and is not a mere *obiter dictum*.
3. Charter of corporation—Reservation of power to amend.—The reservation of a power to add to, alter, amend, or repeal a charter authorizes the proper legislative body to make any addition, alteration or amendment which does not impair vested rights or substantially interefere with the accomplishment of the main purpose of the charter.
4. Charter of railroad corporation—Reservation of power to amend includes power to require permission for other companies to use bridge and terminal facilities.—The reservation in the charter of a railroad company of the power to add to, alter, amend or repeal includes the reservation of power to condition the title to a bridge and to terminal facilities with the provision that the joint use of them shall be allowed to other railroad companies for reasonable compensation, provided that this use does not deprive the holder of the property of the use of it requisite to the handling of its own engines and trains, to the conduct of its own business and to the discharge of its corporate duty to the Government and to the public.

5. Same—Neither mortgagee nor purchaser at foreclosure sale under him acquire title free from the use imposed under such reservation while the property was possessed by the mortgagor.—A mortgagee, or the purchaser at a foreclosure sale of the right of the mortgagee to the property of a mortgagor railroad company, which held its title under a charter that reserved the right of additon, alteration and amendment, take their interests in the property subject to the right of the proper legislative body to exercise, at any time during the possession of the mortgagor and the existence of the mortgage, its reserved power of addition and amendment and thereby to condition the title and use of the property with the requirement that other railroad companies shall be permitted to use it, to the same extent as though the mortgage had never been made. The mortagee and the purchaser under him get nothing which the mortgagor had not and acquire no vested rights as against the legislative body and its beneficiaries

6. Railroad corporation—Power to extend railroad on determination of directors includes power to acquire use of terminal facilities of other companies in another State by action of directors.—The power to construct or extend a railroad beyond the points designated in the articles of incorporation of the company which owns it "as the board of directors of said corporation may determine and designate" includes the power to acquire and enjoy the use of a bridge, a station and the railroad tracks of another company beyond such points and in another State upon the determination and designation of the board of directors and upon compliance with the laws of both States relative to the acquisition and use of property by such a corporation therein.

*Statement.*

This is an appeal from a decree of the circuit court for the district of Nebraska to the effect that the Union Pacific Railroad Company shall admit the Mason City & Fort Dodge Railroad Company to the equal and joint use of its bridge across the Missouri river between Council Bluffs, Iowa, and Omaha, Nebraska, to its passenger station at Omaha and to its main and passing railroad tracks between Council Bluffs, Omaha and South Omaha, upon the terms and conditions specified in the contract between the Union Pacific Railway Company and the Chicago, Rock Island & Pacific Railway Company, which was sustained by the Supreme Court in Union Pac. Ry.

Co. v. Chicago &c. Ry. Co., 163 U. S. 564. The controversy which resulted in this decree involves the same property between Council Bluffs, Omaha and South Omaha that is described in the statement and opinion and that was the subject of the litigation which was closed by that decision. The appellant in this case is the purchaser of this property at a sale of it made in 1897 under the foreclosure of the first mortgage upon it which was made by the old Union Pacific Railroad Company on March 1, 1865. The Mason City & Fort Dodge Railroad Company owns a railroad which extends from Council Bluffs, Iowa, to Manley Junction and to Hampton in the State of Iowa, where it connects with the railroads of the Chicago Great Western Railway Company and forms with these railways through lines of railroad from Council Bluffs to Chicago, Illinois, to St. Paul and Minneapolis, Minnesota, and to Kansas City in the State of Missouri. The Mason City Company sought by this suit to secure, and the decree below granted to it access with its engines and trains to Omaha and South Omaha and to the railroads entering those cities from the west and south by means of the joint use of the bridge and railroads of the appellant, on the ground that the duty was imposed upon the latter company to grant to the Mason City Company this right, upon the payment by the appellee of reasonable compensation for the use of the bridge, station and track, by the acts of Congress of July 1, 1862 (12 Stat. 489), July 2, 1864 (13 Stat. 356, 362), July 25, 1866 (14 Stat. 244) and February 24, 1871 (16 Stat. 430). These acts of Congress and especially those provisions in them that are pertinent to the questions presented in this case were recited, discussed and analyzed in the Rock Island case both in the Supreme Court and in the inferior courts and it is believed that a reference to the opinions in that case will indicate their purpose and effect as well as an extended recital of them here. 47 Fed. 15; 51 Fed. 309, 321, 322; 163 U. S. 564, 585–589. The decree of the circuit court is assailed on many grounds which are considered in the opinion.

SANBORN, circuit judge, after stating the case as above, delivered the opinion of the court.

The chief contention of counsel for the Pacific Company is that the decree below is erroneous (1) because the acts of Congress never imposed upon the Union Pacific Railroad Company, the mortgagor under whose first mortgage of March 1, 1865, the appellant holds the property in question, nor upon its successor, the duty to grant the joint use of its bridge at Omaha, its passenger station in that city, or its railroad between Council Bluffs and Omaha to the appellee, or to any other railroad company, and (2) because if such a duty was imposed upon it, it did not extend so far as to require that

company, or any of its successors in interest, to grant to the appellee or to any other railroad company, the use of its tracks or the use of its other transportation facilities between Omaha and South Omaha, or at any point west of 20th street in the former city.

The arguments and authorities in support of the position here taken by counsel for the appellant admonish us that the questions which it presents are grave, difficult and of doubtful solution. We are, however, met at the threshold of our investigation by the insistent claim of counsel for the appellee that each of the questions presented by this contention has been conclusively answered by the Supreme Court in Union Pacific Ry. Co. *v.* Chicago etc. Ry. Co., 163 U. S. 564. The opinion in that case was rendered by the Supreme Court of the United States, a court whose decisions command and always cheerfully receive the acquiescence of this and all inferior courts, and if it has decided the legal issues pressed upon our consideration, it is neither the province nor the duty of this court to discuss or consider them. So the first question which presents itself for our determination involves a consideration of the nature and effect of the decision in the Rock Island case.

In that case the Union Pacific Railway Company, the successor in interest of the Union Pacific Railroad Company which made the mortgage of March 1, 1865, had made a contract with the Rock Island Company to grant to it the joint and equal use of its bridge and passenger station at Omaha and of its railroads from Council Bluffs to Omaha and South Omaha upon the same terms upon which this decree requires the appellant to grant the use of these facilities to the Mason City Company. The Pacific Railway Company refused to perform this agreement and the Rock Island Company brought a suit in equity to compel its performance. The chief defense which the Pacific Company presented was that the making of the contract was beyond its corporate powers. The counsel for the Rock Island Company answered that the powers of the Pacific Company were ample to permit it to enter upon, and to execute the agreement between them (1) because the authority so to do was one of those incidental powers necessary to the full and convenient exercise of the authority to construct and operate a railroad, which had been expressly granted to it by its charter, and (2) because the acts of July 25, 1866 (14 Stat. 244) and of February 24, 1871 (16 Stat. 430) relating to the Omaha bridge, had expressly granted this authority to it. The Supreme Court considered and discussed at length, in the order in which they have been stated, each of the reasons which had been urged by counsel for the Rock Island Company for the existence of this corporate power. At the close of the discussion of the first reason that court said:

"We think that it would be carrying the doctrine of *ultra vires* much too far to deny absolutely the competency of a railroad company, being a public highway, whose use is common to all citizens, to contract to give another running rights over its tracks without express statutory authority; and that, under proper circumstances, such a contract may well be held within its implied powers. In Lake Superior Railway Co. *v.* United States, 93 U. S. 492, Mr. Justice Bradley adverts to and comments on the fact that in England and in this country railroads when first constructed were by the legislatures and the people regarded and treated as public highways for the use of all who had occasion to run their vehicles thereon; and this is certainly so far true, in modern acceptation that being for the common use of the public, their powers are ordinarily competent to make contracts which will subserve such use. But the determination of the existence of the power to grant running rights in this instance does not rest on these considerations alone. For the provisions of the Pacific Railroad acts relating to the bridge over the Missouri river, its construction and operation, imposed on the Pacific Company the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and the tracks between Council Bluffs and Omaha, and we think that South Omaha was included." The court then proceeded to discuss the acts of Congress relating to the Omaha bridge of the Pacific Company and at the conclusion of that discussion held that it was within the corporate powers of that company to make the contract with the Rock Island Company which was in issue in that case. Union Pacific Ry. Co. *v.* Chicago etc. Ry. Co., 163 U. S. 564, 585, 589.

In this opinion the supreme court clearly declared that the provisions of the Pacific Railroad acts relating to the bridge over the Missouri river imposed upon the Pacific Company the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and over the tracks between Council Bluffs, Omaha and South Omaha. Unless the appellant has escaped the imposition of this duty because it holds the bridge and tracks under the mortgage of March 1, 1865, and not by virtue of a conveyance from the mortgagor or its grantee made subsequent to the Omaha Bridge act of February 24, 1871 (16 Stat. 430), a question which will be subsequently considered, it owes the same duty to the Mason City Company now that the Pacific Railway Company owed to the Rock Island Company in 1890 before the contract between them was made, because the Mason City Company is practically in the same situation and has the same need of the use of these transportation facilities to-day that the Rock Island Company occupied and had at that time. The conclusion necessarily follows that the two reasons for the re-

versal of the decree below which are stated at the opening of this opinion cannot be sustained or considered by this court unless it is at liberty to disregard the declaration of the opinion of the Supreme Court upon the very question they present, which that court so clearly announced in the Rock Island case. May this court lawfully do so?

Counsel for the appellant argue with great ability, ingenuity and force that the decision of this question was not necessary to the determination of the main issue presented in the Rock Island case, that the real question in that case was the power of the Pacific Company to make the contract there under consideration and not its duty to grant the joint use of its transportation facilities to other railroad companies. They insist that all that was said upon the subject of its duty to the Rock Island Company was the mere *obiter dictum* of Mr. Chief Justice Fuller who delivered the opinion. They recite again and rely upon the oft-quoted words of Chief Justice Marshall in Cohens *v.* Virginia, 6 Wheat. 264, 399, that "it is a maxim, not to be disregarded, that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason for this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated," and they insist that this court is not bound by the expression of opinion upon this question in the Rock Island case and that it should disregard it and consider the issue as a new question.

It is true that the power to grant the joint use of its transportation facilities at Council Bluffs, Omaha and South Omaha might exist in the Pacific Company without the duty to grant them. But it is also true that the duty could not exist without the power. If the duty existed it was imposed by the Congress which had the authority to grant the power and the imposition of the duty necessarily carried with it the power to discharge that duty. The opinion of the Supreme Court upon the second reason assigned by counsel for the Rock Island Company for the existence in the Pacific Company of the power to make the contract between the companies when analyzed and stated in syllogistic form reads in this way: The Congress of the United States by its act relating to the bridge over the Missouri river imposed upon the Pacific Company the duty of permitting the Rock Island Company to use the bridge and the other

transportation facilities of the Pacific Company between Council Bluffs, Omaha and South Omaha. The imposition of this duty necessarily carried with it the grant of the power to discharge it. Therefore, the Pacific Company had the power to make the contract which granted this permission. Now, how can the position be successfully maintained that the decision of the question involved in the major premise of this syllogism was beyond the case under the consideration of the court, or unnecessary to its decision, when a determination that no such duty was imposed would have been fatal to the argument and would necessarily have resulted in the conclusion that no power to make the contract was granted by the act of Congress relating to the Omaha bridge? No satisfactory answer to this question has been made and the conclusion is inevitable that the consideration and decision of the question whether or not it was the duty of the Pacific Company under the act of Congress relative to the Omaha bridge to permit the Rock Island Company to use the transportation facilities in question was necessary to, and determinative of the decision that the Pacific Company had the power under those acts to grant to the Rock Island Company the permission to use them.

It is, however, contended that it was unnecessary to the determination of the ultimate question before it for the court to decide the latter question at all, that it was unnecessary for it to determine whether or not the Pacific Company had the corporate power to make the contract under the acts relating to the Omaha bridge, because it had already decided in the earlier part of its opinion and before it reached the discussion and decision of this question that the Pacific Company had this power under its general grant of authority to construct and operate railroads. It is contended that because the court based its decision of the ultimate question upon its decisions of these two questions of law, each of which was debated, discussed and deliberately decided and the decision of either one of which furnished ample ground to sustain the ultimate conclusion, the decision of one of these preliminary questions was unnecessary and all that was said about it was *obiter dictum*. This argument, however, proves too much. If it establishes anything, it proves that in every case in which a court places its adjudication of the ultimate issue of law upon its decisions of two or more legal questions, the decision of either of which is sufficient to sustain its adjudication, it decides nothing, that each of its preliminary decisions is unnecessary because the other or the others are sufficient to sustain the adjudication without it, and hence that all of them in turn may be held to be *obiter dicta*. Such is not the law. Where the conclusion of the court may be sustained by decisions of two or more questions of law

that are fairly presented for its determination, the province and duty of the court which prepares the opinion and renders the decision is to determine whether it will rest its conclusion upon one or more of these legal issues, and where it places its ultimate adjudication upon two or more propositions of law which it properly discusses and decides, either one of which is sufficient to sustain its conclusion, each decision of each of the propositions is within the limits of the case presented to it and is a conclusive and binding adjudication of the court. The decisions of all the legal propositions upon which the court places its adjudication of the ultimate legal question are pertinent and logically lead alike to the final conclusion and they are alike decisive of the questions which they determine. Railroad Cos. *v.* Schutte, 103 U. S. 118, 143; Buchner *v.* Chicago, Milwaukee & N. W. Ry. Co., 60 Wis. 264, 270, 273; Alexander *v.* Worthington, 5 Md. 471, 481; Jones *v.* Habersham, 107 U. S. 174, 179.

Concede that the decision of the Supreme Court, that the power of the Pacific Company to make the contract with the Rock Island Company might be implied from the general grant of power to construct and operate its railroads, was ample to support its ultimate conclusion and that it was unnecessary for it to decide that the duty was imposed upon that company and that the power was granted to it so to do by the acts relating to the Omaha bridge. Yet it is equally true that the decision of the latter question was also sufficient to sustain its ultimate determination and that the former decision was equally unnecessary to that conclusion. Yet each of these two questions was debated at the bar of the Supreme Court, each of them was pertinent to the legal issue which that court was compelled to decide, each of them was discussed and decided by that court and was one of the logical steps to the determination of the ultimate legal issue which it was required to decide and it placed its determination of that issue upon its decision of both of these questions and upon its decision of one as much as upon its determination of the other. That court necessarily decided when it approved and delivered its opinion, and that decision is not open to review or criticism here, that the discussion and decision of each of these two questions was within the case before it and essential to the determination of the ultimate issue it was considering. If it had not so decided, it would not have discussed with equal care and labor and have decided with equal clearness and certainty each of these issues of law. It did not disregard or discard one of these questions and place its decision upon a determination of the other, and an inferior court cannot now lawfully do so because it cannot know upon which proposition the Supreme Court would prefer to rest its conclusion, if it were compelled to choose between them. The result is that the discussion and determination

of each of these two questions must be considered within the limi
of the case, pertinent and essential to the determination of the ult
mate issue of law presented to the Supreme Court. It necessaril
follows as a corollary to this conclusion that the discussion and d
cision of every legal question pertinent and essential to the determin
tion of either of the two questions to which reference has been mad
was within the case before the court and the determination of it b
came a binding and conclusive adjudication of the question in
the courts of the nation. The decision that under the acts of Co
gress relating to the Omaha bridge the duty was imposed upon t
Pacific Company to grant the use of its transportation facilities b
tween Council Bluffs, Omaha and South Omaha to the Rock Isla
Company was the major premise of the argument and was ind
pensable to the decision of the Supreme Court that under those a
the corporate power to make the contract with the Rock Island Co
pany was granted to the Pacific Company, and that adjudication
therefore as binding and conclusive upon this and upon all inferi
courts as the decision by that court of any other pertinent legal qu
tion properly presented to it for determination. The considerati
to which reference has now been made have forced our minds
resistibly to the conclusion that the question whether or not t
Pacific Railroad acts relating to the Omaha bridge imposed upon
Union Pacific Railway Company the duty to grant to the Ro
Island Company and to other companies, like the respondent, wh
are similarly situated, the joint and equal use of its transportat
facilities described in the decree below not only between Cou
Bluffs and Omaho, but also between Omaha and South Omaha, h
been conclusively determined by the decision of the Supreme Co
in the Rock Island case and that it is not open to our considerat
or decision. The clear declaration of the opinion of the Supre
Court upon this question in the Rock Island case does not app
to us to be the mere *obiter dictum* of the Chief Justice who wrote
and even if we are in error in this conclusion, the declaratio
that fact and the reversal of the decision there expressed will c
with much better grace from the court which delivered the opin
to which this case is removable by appeal, than from an infe
court which ought not to presume, even when the answer to
question is doubtful, that the court whose decisions advise and
trol its determinations has unnecessarily or unadvisedly determi
a question which was not lawfully presented for its considerati

The conclusion at which we have now arrived renders the
sideration of the questions relative to the Saunders deed and
tripartite agreement under which the Mason City Company cl
the right to the use of the bridge, station and tracks in questio

necessary to a decision of this case and they will neither be stated nor decided.

Counsel for the appellant insist, however, that even if the duty was imposed upon the mortgagor company, or upon its successor in interest, the Union Pacific Railway Company, by the act of February 24, 1871, (16 Stat. 430) to permit other railroad companies to enjoy the joint use of its bridge and transportation facilities at and near the city of Omaha, no such duty was ever fastened upon the appellant because it is the purchaser of this property at the foreclosure sale of it under the mortgage of March 1, 1865, and it takes the title to it in the condition in which it was at the time the mortgage was given and free from the burden placed upon it by the act of 1871. But the mortgagee and the purchaser under the mortgagee took their lien upon, and title to this property subject to the terms and conditions of the grant of the franchise to the mortgagor to construct and operate the Pacific railroads contained in the acts of July 1, 1862, (12 Stat. 489) and July 2, 1864, (13 Stat. 356, 362). One of the conditions of this grant was that Congress might at any time "to promote the public interest and welfare, * * * having due regard for the rights of said companies named herein, add to, alter, amend or repeal this act" (12 Stat. 489, 497, § 18; 13 Stat. 356, 365, § 22). The act of February 24, 1871, (16 Stat. 430) which imposed the duty to permit other railroad companies to use the bridge, station and tracks was an addition by Congress to the original grant of the franchise to the Union Pacific Railroad Company. It added to the authority given by that grant the power to issue bonds to the amount of $2,700,000 for the purpose of raising the necessary funds to construct the bridge and its approaches and the authority to mortgage this property to secure the payment of the bonds. It added to the conditions and burdens under which the property acquired under the original franchise might be held and operated the condition that permission should be given to other railroad companies to use the bridge, its approaches and appurtenances upon payment of reasonable compensation therefor and that Congress should at all times have the right to regulate the bridge and the rates for the transportation over it of freight and passengers.

The reservation of a power to add to, alter, amend or repeal a charter authorizes the proper legislative body to make any addition, alteration or amendment which does not substantially impair vested rights or directly impede the accomplishment of the purpose of the grant and which the legislative body deems proper to secure the best interests of the public. Sinking-Fund cases, 99 U. S. 700, 720, 721; New York & N. E. Railroad Co. *v.* Bristol, 151 U. S. 556, 567. The mortgagee and the purchaser under the foreclosure of the mort-

gage of the property of a corporation held under a charter subject to a reservation of the power of addition or amendment take their lien and interest in the property subject to the right of the proper legislative body to exercise its power to condition the title and use of the property as long as it is held by the mortgagor to the same extent as if no mortgage had ever been made. The mortgagor cannot convey, nor can the mortgagee acquire as against the grantor of the franchise and its beneficiaries, more than the mortgagor has to give. Neither the mortgagee nor the purchaser at a foreclosure sale under him can acquire, as against the Government and its beneficiaries, vested rights in the face of such a reservation of the power of amendment properly exercised before the foreclosure. Chicago, Burlington & Quincy R. Co. *v.* Iowa, 94 U. S. 155, 162.

The imposition by the act of 1871 of the duty to permit other railroad companies to enjoy the joint use of the bridge, the station and the tracks, which constituted a part of the terminal facilities of the Pacific Company at the three cities, upon payment of reasonable compensation therefor, impaired no vested right of the railroad company or of its first mortgage bondholders so long as the discharge of this duty did not substantially interfere with the present or prospective use of these facilities by the holder of the Union Pacific railroad, or with the discharge by it of the duties which that company owed to the Government and to the public under its franchise. Tomlinson *v.* Jessup, 15 Wall. 454, 459; Miller *v.* The State, 15 Wall. 478, 498; Railroad Co. *v.* Maine, 96 U. S. 510; Pearsall *v.* Great Northern Ry. Co., 161 U. S. 646, 656. In Tomlinson *v.* Jessup, Mr. Justice Field speaking for the Supreme Court of the power to amend reserved in a charter said: "The reservation affects the entire relation between the State and the corporation and places under legislative control all rights, privileges, and immunities derived directly from the State." The old Union Pacific Railroad Company which made the mortgage upon which the appellant relies acquired its right of existence and its right to acquire, hold and use these terminal facilities from the acts of 1862 and 1864 which contained the reservation which we have recited and no one could acquire from that corporation any right to this property which was not conditioned by it and by the subsequent exercise of the reserved power by the act of 1871. The appellant bought this property subject to this condition and burden. The joint use of it which the decree below requires it to allow to the Mason City Company does not deprive it of that use of its facilities which is necessary to the handling of its own engines, cars and trains, the conduct of its own business and the discharge of its corporate duties to the Government and to the public. Neither the imposition of the duty nor the discharge of that duty

which the decree requires impairs any vested right of the appellant or of its predecessors in interest. Both the imposition of the duty and the discharge of it fall far within the power reserved to the Congress in the original grant and within the provisions of the act of 1871 as that act has been construed by the Supreme Court in the Rock Island case, and all the rights of the appellant were acquired subject to, and with notice both of the duty that had been imposed before its purchase and of the effect which the discharge of that duty would have upon the property and its use. There is no escape for the appellant from the discharge of this duty upon the ground that under the foreclosure of the first mortgage it takes the title which the Union Pacific Railroad Company had on March 1, 1865, free from the duty imposed by the act of 1871, because that title was subject, when the mortgage was made, to the reserved right of the Congress to condition the use and enjoyment of the property here in question with the discharge of the duty imposed upon its owner by the act of 1871, and by the decree of the circuit court for the district of Nebraska which it here challenges.

The next contention of counsel for the appellant is that the decree should be reversed because the evidence discloses no necessity for the Mason City Company to use the transportation facilities in question and no probability of irreparable injury to it from the refusal of its use of them. It is said that there is another railroad bridge across the Missouri river at Omaha owned and operated by another corporation, that the Mason City Company can obtain by agreement with that corporation the use of facilities for the transfer of its engines, trains and business from Council Bluffs to the railroads entering Omaha and South Omaha from the south and west as serviceable to it as that provided by the decree and that if it does not desire to obtain the use of a bridge and tracks in this way, it can construct a new bridge across the river and new railroads between the three cities. The latter suggestion is unworthy of serious consideration. It is undoubtedly possible, but it is neither practicable nor advisable either in the interest of the appellee or in the interest of the public whom it serves that that company should invest the large amount of money that would be required to construct another bridge and to purchase a right of way through the city of Omaha and that it should consequently impose upon the traffic of the country the tax that would be necessary to pay it a fair income upon such an investment.

The allegation that the Mason City Company can by contract with the owner of the other bridge secure the use of transportation facilities as serviceable to it as the use of those secured by the decree in this case is denied by its counsel and the proof does not sat-

isfactorily support the averment. But suppose that this allegation were true. Would that fact be a conclusive defense to the claim of the appellee that the Pacific Company shall discharge the duty which it owes to it under the act of 1871? A agrees to convey to B a lot in a city for a certain price. Is it any answer to B's bill for specific performance of the agreement that he can obtain another lot of equal value and equally useful to him from C for the same price and that consequently no irreparable injury will result to him from the refusal of A to perform his contract? The State grants a franchise to a corporation to operate a railroad upon the condition that the grantee shall transport the goods of all shippers upon the same terms. Is it any answer to a bill to compel the railroad company to discharge this duty to a shipper that the latter can procure the transportation of his goods to their destination by another railroad company upon the terms he seeks and that the refusal of the first company to discharge its duty him will therefore inflict no irremediable loss upon him? The appellant owes the Mason City Company the duty of permitting it to enjoy the joint use of its bridge, station and tracks for reasonable compensation. The proof is plenary that the appellee needs this use to bear its traffic from Council Bluffs to the railroads entering Omaha and South Omaha from the west and south and that the refusal of it must entail upon it substantial loss and damage. It is apparent that this injury is in its nature incapable of computation and insusceptible of proof, so that an action at law for damages could not afford adequate compensation for it. It is evident that the public interest, the interest of shippers, producers and consumers alike, will be served by the use of this property by the Mason City Company, by the increase of competition which naturally results from the admission of an independent line of railroad into great cities. The existence of the duty, the need of its performance on the part of the party to whom it is due and the certainty of substantial and incalculable injury to it from a refusal of the party which owes it, furnish substantial and ample grounds to invoke the favorable action of the chancellor. The great purpose of the imposition upon the Pacific Company of the duty of permitting other railroad companies to use its bridge, approaches and appurtenances by the act of 1871 was to provide a ready and facile means for the connection of the railroads entering Council Bluffs from the east with those entering Omaha and South Omaha from the south and west. The Mason City Company enters Council Bluffs from the east. It needs and demands the connection which the act of 1871 provided for it. A refusal of this connection must entail upon it substantial and incalculable injury. The decree compels the connection, enforces the discharge of the duty which

the Pacific Company owes to the appellee and thus accomplishes the chief object of the act of Congress which imposed the duty. This decree ought not to be reversed either because the appellee could procure its connection with southern and western railroads by the use of another bridge or by the construction of a new bridge, nor because although the injury to the appellee from a refusal to compel the discharge of the duty would be great and incapable of calculation or proof, it would not be impossible of satisfaction if its amount could be ascertained.

Finally it is contended that the decree should be reversed because the Mason City Company has no corporate power to acquire or hold any interest in, or use of the property of the Pacific Company in the State of Nebraska.

The Mason City Company is a corporation of the State of Iowa. On January 7, 1903, it accepted by a proper resolution of its board of directors, and on January 13, 1903, it filed its articles of incorporation with the secretary of the State of Nebraska and complied with the terms of the act of the legislature of that State approved March 19, 1889, entitled "An act to enable foreign corporations to become domestic corporations of this State." Compiled Statutes of Nebraska, 1901, ch. 16, § 215. It thereby acquired the right to hold and use any interest in property in the State of Nebraska which the laws of Iowa and its articles of incorporation authorized it to acquire or use. The statutes of Iowa provide that any such corporation organized for the purpose of constructing a railway from a point within that State may construct or extend the same into or through another State under such regulations as may be prescribed by the laws of the latter State. Statutes of Iowa, 1897, § 2038. The articles of incorporation of the company provide that "the object of said corporation is to construct, maintain and operate a railroad from Mason City in the county of Cerro Gordo to Fort Dodge in the county of Webster in said State, thence to Lehigh in said county of Webster and thence from a point on its line at or near said Lehigh in a southwesterly direction to the city of Council Bluffs in the county of Pottawatamie in said State of Iowa with such lateral branches from any point on its said line and such extensions beyond each and every of said points as the board of directors of said corporation may determine upon and designate and the law permit." On October 28, 1902, the officers of the company were authorized and directed by a proper resolution of its board of directors to negotiate for, to demand, and to enforce by this or other suits its demand for the use of the bridge, of the station and of the transportation facilities of the appellant which has been awarded by the decree below.

The argument in suppport of the proposition that this company

has no corporate power to acquire or enjoy the use of these transportation facilities of the Pacific Company in the State of Nebraska is this: The charter of a corporation is the measure of its powers, the enumeration of the powers there contained is the exclusion of all others. The power to acquire and enjoy the use of transportation facilities or of property in the State of Nebraska is not enumerated in the articles of incorporation which constitutes the charter of the Mason City Company. Therefore, that company has no such corporate power. The major premise is conceded. The minor premise and the conclusion do not appear to be sustained by the facts. The statutes of Iowa provided as we have seen that this corporation and any other corporation organized for the purpose of constructing a railroad from a point within that State might build or extend the same into or through any other State under such regulations as the laws of that State might prescribe. This company complied with the regulations which the State of Nebraska prescribed to enable it to construct or extend, and to acquire and hold the necessary property to enable it to operate its railroad in and through that State. Its articles of incorporation empowered it to build and operate its railroad from Fort Dodge to Council Bluffs with "such extensions beyond each and every of said points as the board of directors of said corporation may determine upon and designate and the law permit." The acquisition of the joint and equal use of the bridge over the Missouri river, of the station at Omaha and of the railroads of the Pacific Company between the three cities was in practical and in legal effect an extension of the railroad of the Mason City Company from Council Bluffs to Omaha and to South Omaha. The laws of Iowa and Nebraska permitted, nay, they authorized such an extension upon the single condition that the board of directors should determine upon and designate it. The resolution of the board of October 22, 1902, which empowered and directed the officers of the Mason City Company to demand and enforce its demand for the use of the transportation facilities of the Pacific Company between Council Bluff and Omaha and South Omaha was a complete compliance with this condition, and the acquisition and enjoyment of that use are not beyond the corporate powers of the appellee.

The result of the whole matter is that under the opinion of the Supreme Court in Union Pacific Ry. Co. *v.* Chicago &c. Ry. Co., 163 U. S. 564, 586, to the effect that the appellant in that case owed to the Rock Island Company the duty under the Pacific Railroad acts relating to the Omaha bridge to permit it to use the very facilities in question in this case, an opinion which this court for reasons which have been fully stated, does not feel at liberty to criticize or

disregard, there is no escape from the conclusion that the appellee is entitled to the relief granted to it by the decree below. That decree must accordingly be affirmed and it is so ordered.

Filed February 29, 1904.

(*Decree.*)

And on the twenty-ninth day of February, A. D. 1904, in the record of the proceedings of said circuit court of appeals is a decree in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1903.

MONDAY, *February* 29, 1904.

UNION PACIFIC RAILROAD COMPANY, Appellant,
*vs.*
MASON CITY AND FORT DODGE RAILROAD COMPANY. } No. 1975.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that the Mason City and Fort Dodge Railroad Company have and recover against the Union Pacific Railroad Company the sum of twenty dollars for its costs herein and have execution therefor.

February 29, 1904.

(*Petition for Appeal.*)

And on the sixth day of April, A. D. 1904, a petition for an appeal to the Supreme Court of the United States was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

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|---|---|
| UNION PACIFIC RAILROAD COMPANY, Appellant, *vs.* MASON CITY & FORT DODGE RAILROAD COMPANY, Appellee. | Petition for Appeal. |

The above named appellant, Union Pacific Railroad Company, respectfully shows that the above entitled cause is now pending in the United States circuit court of appeals for the eighth circuit, and that a judgment and decree therein has been rendered on the 29th day of February, 1904, affirming the decree of the circuit court of the United States for the district of Nebraska, and that the matter in controversy in said suit exceeds exclusive of interest and costs the sum or value of one thousand dollars; that this cause is one in which the said United States circuit court of appeals for the eighth circuit has rendered final decision. That this is not a case in which the original jurisdiction of said United States circuit court for the district of Nebraska was dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States, but that the jurisdiction of said court was originally invoked also because this was a case arising under the laws of the United States under which complainant claimed rights and asked relief from said circuit court based on said laws of the United States, and what it claimed to be the true construction and meaning thereof, while your petitioner resisted said claim and denied the construction placed thereon by complainant. That the laws in qestion were as follows:

"An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes," and was passed by the Congress of the United States, and approved July 1st, 1862.

'An act to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July first, eighteen hundred and sixty-two,' and was passed by the Congress of the United States and approved July 2nd, 1864.

"An act to authorize the construction of certain bridges, and to establish them as post roads.", and was passed by the Congress of the United States, and approved July 25th, 1866.

"An act to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri river, at Omaha, Nebraska, and Council Bluffs, Iowa.", and was passed by the Congress of the United States and approved February 24th, 1871.

That a Federal question is involved in this case, and it is a case arising under the laws of the United States, above referred to, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said appellant prays that an appeal be allowed it in the above entitled cause directing the clerk of the United States circuit court of appeals for the eighth circuit, to send the record and proceedings in said cause, with all things concerning the same to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellant, may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

JOHN N. BALDWIN,
*Attorney for Appellant, Union Pacific Railroad Company.*

W. R. KELLY, *Of Counsel.*

(Endorsed:) No. 1975. In the United States circuit court of appeals, eighth circuit. Union Pacific Railroad Company, appellant, vs. Mason City & Fort Dodge Railroad Company, appellee. Petition for appeal. John N. Baldwin, solicitor for appellant. W. R. Kelly, of counsel. Filed Apr. 6, 1904, John D. Jordan, clerk.

(*Affidavit as to Amount in Controversy.*)

And on the sixth day of April, A. D. 1904, an affidavit as to amount in controversy was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

| | |
|---|---|
| UNION PACIFIC RAILROAD COMPANY, Appellant, vs. MASON CITY & FORT DODGE RAILROAD COMPANY, Appellee. | Affidavit as to Amount in Controversy. |

STATE OF NEBRASKA, *County of Douglass,* } ss:

I, John N. Baldwin, being first duly sworn, upon oath say that I am general attorney for Union Pacific Railroad Company, the ap-

pellant in the above entitled action. That I have had charge of said case for appellant since its inception and have full knowledge of all facts connected with the same. That the amount in controversy herein far exceeds the sum of one thousand dollars, interest and costs. That this is an action instituted by appellee to compel the appellant to grant it the right to use jointly and fully with appellant the certain railroad bridge across the Missouri river between Council Bluffs, Iowa, and Omaha, Nebraska, belonging to appellant also its depots in Council Bluffs and Omaha, and also its main and side tracks, switches and other terminal facilities extending from Council Bluffs, Iowa, to South Omaha, Nebraska. That said bridge depots, tracks and terminal facilities were built and erected at a cost of thousands of dollars, and are of the value of many thousands of dollars. That a fair and reasonable compensation for the use of said properties would amount to many thousands of dollars annually and that appellee in its bill offered to pay appellee compensation amounting to many thousands of dollars annually for the use of said properties. That appellee claims that if it is denied the relief prayed for in its bill it will be damaged irreparably and that it will sustain damages in an amount very far in excess of one thousand dollars and in a sum amounting to many thousands of dollars. That appellee claims that the right to use said properties is very valuable to it and worth an amount far in excess of one thousand dollars. That the matter of the right of appellee to use said properties is involved in this action, and appellee claims such right as a perpetual one, and that in determining such right a controversy is involved in an amount far in excess of one thousand dollars, besides interest and costs.

JOHN N. BALDWIN.

Subscribed in my presence and sworn to before me by the said John N. Baldwin, this 25th day of March, 1904.

FRANCIS J. MIEDING,

[SEAL.] *Notary Public in and for Douglas County, Nebraska.*

Commission expires May 1, 1907.

(Endorsed:) No. 1975. In the United States circuit court of appeals for the eighth *eighth* circuit. Union Pacific Railroad Company, appellant *vs.* Mason City & Fort Dodge Railroad Company *appellant.* Affidavit as to amount in controversy. John N. Baldwin, solicitor for appellant. W. R. Kelly, of counsel. Filed Apr. 1904, John D. Jordan, clerk.

(*Assignment of Errors.*)

And on the sixth day of April, A. D. 1904, an assignment of errors was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

UNION PACIFIC RAILROAD COMPANY, Appellant,
*vs.*
MASON CITY & FORT DODGE RAILROAD COMPANY, Appellee.
} Assignment of Errors.

And now on this 6th day of April, 1904, came the appellant Union Pacific Railroad Company, by its solicitors W. R. Kelly and John N. Baldwin, and they say that there is manifest error in the records, proceedings and decree in said cause, and that the decree rendered by this court is erroneous and against the just rights of said appellant for the following reasons:

I.

That the court erred in affirming the decree of the court below.

II.

That the court erred in not reversing the decree of the court below and remanding this cause, with directions to dismiss complainant's bill.

III.

That it was against the just rights of the appellant to hold and decide that the appellee was entitled under the acts of Congress of July 1st, 1862, July 2d, 1864, July 25th, 1866, and February 24th, 1871, to go over and across the bridge of the appellant between the cities of Council Bluffs, Iowa, and Omaha, Nebraska, and that under said acts it was entitled to the full, equal and joint use with other railroads of the main and passing tracks of the defendant located or established or to be located or established between the city of Council Bluffs in the State of Iowa, and the city of South Omaha in the State of Nebraska, and also the terminal facilities mentioned in the decree, and the court erred in so finding and deciding and affirming the decree of the court below on that ground.

IV.

That the court erred in not reversing that part of the decree of the court below which provided for the use by appellee of appellant's track and terminal facilities between Twentieth street in the city of Omaha, and up to and including the depot of appellant in the city of South Omaha, Nebraska, and the court erred in affirming that part of the decree of the court below permitting the use of the tracks and terminal facilities of appellant beyond and west of Twentieth street in the city of Omaha, Nebraska.

V.

That it was against the just rights of the appellant and erroneous for the court to hold and decide that under the acts of Congress of July 1st, 1862, July 2, 1864, July 25th, 1866, and February 24th, 1871, referred to, that the appellee was entitled to the full, equal and joint use of the bridge across the Missouri river, main, side and passing tracks, passenger depot, spur tracks and connecting tracks, with the appellant, and the court erred in so finding and deciding and affirming the decree of the court below for that reason.

VI.

That it was against the just rights of the appellant and erroneous for the court to decide and hold that the appellee possessed the same right as against the appellant to enforce the provisions of the act of Congress of the United States of February 24th, 1871, as it would have possessed against the old The Union Pacific Railroad Company, the congressional corporation, and the Union Pacific Railway Company, and the court erred in so finding and deciding and in affirming the decree of the court below for that reason.

VII.

That it was against the just rights of the appellant and erroneous for the court to hold and decide that the appellant did not under the foreclosure of the first mortgage of March 1st, 1865, acquire all of the properties of the old company, to-wit, the Union Pacific Railroad Company, a congressional corporation, free and clear of any lien charge or duty of or to the United States of America, under any act of Congress of the United States except as specified in the decree of foreclosure entered in said cause in the circuit court of the United States for the district of Nebraska, July 9th, 1897, and the court erred in affirming the decree of the court below on that ground.

VIII.

That it was against the just rights of the appellant and erroneous for the court to refuse to hold and decide that the act of the Congress of the United States, of date February 24th, 1871, did not require The Union Pacific Railroad Company, this appellant, to permit the appellee to use its bridge across the Missouri river between the cities of Council Bluffs, in the State of Iowa, and South Omaha, in the State of Nebraska, together with all tracks, side tracks, spur tracks, facilities, etc., and the court erred in so refusing and failing to so find and decide and in affirming the decree of the court below on that ground.

IX.

That it was against the just rights of the appellant and erroneous for the court to hold and adjudge that under the reservation of the power to add to, alter, amend or repeal the said act of Congress of July 1st, 1862, and the acts of Congress amendatory thereof and supplemental thereto, it was within the power of Congress to condition the title to the railroad bridge of the Union Pacific Railroad Company and to the terminal facilities used in connection therewith, so that said The Union Pacific Railroad Company, or its assigns, should be required to and should permit the joint use of such bridge, when erected and such terminal facilities, when created, to other railroad companies without its consent, and the court erred in so finding and adjudging, and in affirming the decree of the court below for that reason.

X.

That it was against the just rights of the appellant and erroneous for the court to hold and adjudge that it was within the power of Congress, under the reservations contained in and the terms of said act of July 1, 1862, and the acts of Congress amendatory thereof and supplemental thereto, to affect, prejudice or modify the vested right and title of the trustees of the mortgagee, or of the mortgagees of the properties of the Union Pacific Railroad Company, which were acquired by said trustees and mortgagees prior to the said act of 1871, and in holding that such mortgagees or the purchasers of the mortgaged property at a foreclosure sale under such a mortgage, took their interests as such mortgagees or their rights in said properties as such purchasers subject to the power of Congress or the proper legislative body, to exercise at any time during the possession of said mortgagor and the existence of said mortgage, a reserved power of addition and amendment whereby the title to said mortgaged

estate might or could be, after the construction of said bridge and the creation of such terminal facilities, conditioned as to the title or use thereof with any other conditions than those contained in the original act of 1862, or to impose upon said mortgagees or the purchasers under such mortgage the duty of permitting other railroad companies to use said properties to the same extent as though such mortgage had never been made, or to any extent, without the consent of such mortgagees or of the purchasers under said mortgage, and the court erred in so holding and adjudging, and in affirming the decree of the court below for that reason.

XI.

That it was against the just rights of the appellant and erroneous for the court to hold and adjudge that said act of 1871 and the relief granted thereunder by the decree of the circuit court for the district of Nebraska did not impair the vested rights of the first mortgagees of said The Union Pacific Railroad Company, and it was further against the just rights of the appellant and erroneous for the court to hold and adjudge that the relief granted to the complainant in the original bill and prayed by it did not impair the vested rights vested in the said mortgagees under said first mortgage, and the court erred in so holding and adjudging, and in affirming the decree of the court below for this reason.

XII.

That it was against the just rights of the appellant and the court erred in adjudging and decreeing that under the Saunders' deed and the tripartite agreement and under the acts of the Congress of the United States of July 1st, 1862, July 2d, 1864, July 25th, 1866 and February 24th, 1871, there was secured to the appellee the full equal and joint possession and use of the main and passing tracks and other premises described in appellee's bill of complaint, and in the decree of the court below, and that the rights, privileges, use and properties referred to in said bill of complaint and in said decree were secured to the said appellee under any contract, deed or acts of Congress of the United States, and the court erred in affirming the decree of the court below for that reason.

XIII.

That it was against the just rights of the appellant and the court erred in adjudging and decreeing that there was equity in the appellee's bill of complaint, and that the appellee was entitled to the relief prayed for, and in affirming the decree of the court below upon that ground.

XIV.

That it was against the just rights of the appellant, and the court erred in ordering adjudging and decreeing that the appellee was entitled under the acts of Congress of the United States to use, occupy and enjoy the premises referred to in the bill of com plaint and the decree of the court below to South Omaha, Nebraska, and the court erred in affirming the decree of the court below in that regard.

XV.

That it was against the just rights of the appellant and erroneous for the court to refuse to hold and decree that no advantage could be taken by the appellee of the conditions found in the Alvin Saunders deed, because,

(a.) Saunders was a naked trustee, and the city of Omaha is the real party in interest.

(b.) It is a deed in fee to Union Pacific Railroad Company, with a condition subsequent in favor of the city of Omaha, the real party in interest.

(c.) No one but the real party in interest has the right to insist upon the performance of the conditions or enforce the penalty for failure to perform.

(d.) The limitations and conditions in the Saunders deed are invalid and illegal, and for this reason Union Pacific Railroad Company took an estate in fee free from all conditions and limitations.

And for the reasons above stated the court erred in affirming the decree of the court below.

XVI.

That it was against the just rights of the appellant and erroneous for the court to refuse to hold that the limitations and reservations in the deed of Saunders, trustee, to Union Pacific Railroad Company were invalid and not binding upon the appellant, and the court erred in affirming the decree of the court below for that reason.

XVII.

That it was against the just rights of the appellant and erroneous for the court to refuse to hold that the city of Omaha was the real party in interest, and for whose benefit the contract recited in the Saunders deed was made, and that the appellee would only be incidentally benefitted by the enforcement of said contract, and therefore it is not entitled to maintain this suit under said contract,

and the court erred in affirming the decree of the court below for this reason.

XVIII.

That it was against the just rights of the appellant and erroneous for the court to refuse to hold and decide that no necessity exists for the use of the bridge across the Missouri river and the other properties referred to in the bill of complaint and in the decree by the appellee for its entrance in the city of Omaha, Nebraska, and the court erred in not reversing the decree of the court below for this reason.

XIX.

That it was against the just rights of the appellant and erroneous for the court to refuse to hold and decide that in no event and under no construction which could be placed upon the Saunders deed and the act of the Congress of the United States of February 24th, 1871, could there be any right to the use of the tracks beyond Twentieth street in the city of Omaha, Nebraska, nor could there be any right to the use of the tracks beyond Twentieth street in the city of Omaha under the acts of July 1st, 1862, July 2d, 1864, and July 25th, 1866, and the court erred in refusing to so hold, and erred in not reversing the decree of the court below for this reason.

XX.

The court erred in ordering and decreeing that the appellee is entitled to admission and should be admitted into "the full, equal and joint use of the main and passing tracks of Union Pacific Railroad Company, now located and established, or which may hereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, State of Iowa, to a connection with the Union Stock Yards railroad, and the other railroads connecting with the Union Pacific railroad at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri river, between the cities of Council Bluffs, Iowa, and Omaha, Nebraska," or any part thereof, and the court erred in affirming the decree of the court below in that regard.

XXI.

The court erred in ordering and decreeing that the appellee should be admitted to "the connection with, and the tracks pertaining thereto, of the general passenger station of the said Union Pacific railroad in Omaha, and said passenger station, and all tracks and

facilities connected therewith," and the court erred in affirming the decree of the court below in this regard.

XXII.

The court erred in ordering and decreeing that the appellee was entitled to "a connection with the side or spur tracks leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereinafter made," and the court erred in affirming the decree of the court below in this regard.

XXIII.

The court erred in finding and decreeing that the appellee should be admitted to the use of "a connection with the side tracks in Omaha, on which to receive from and deliver to said Union Pacific Railroad Company freight which may be handled through the warehouses, or may be switched by said Union Pacific Railroad Company," and the court erred in affirming the decree of the court below in this regard.

XXIV.

The court erred in finding and decreeing that the *appel-ee* was entitled to admission to the "connections with the Union Stock Yards tracks in South Omaha, and with the tracks of all other railway companies, which now or may hereafter connect at or near South Omaha with the tracks of the Union Pacific Railroad Company" in said decree described "each and all to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company, and the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, Rock Island & Pacific Railway Company, as appears by the contracts in evidence in this case, and the depot contract, and the supplemental contract between the same parties, being Exhibits Nos. 6 and 7, attached to the bill of complaint herein, without preference or discrimination," and the court erred in affirming the decree of the court below in this regard.

XXV.

The court erred in finding and decree- that the appellee was entitled to the use or the right to use and occupy any of the said premises of the appellant, upon the terms set forth in said decree, of any of the several contracts, or any of them, and the court erred in affirming the decree of the court below in this regard.

XXVI.

The court erred in finding and decreeing that the appellee was entitled to "connect its tracks with the said tracks of the Union Pacific Railroad Company at the point in Council Bluffs, and in the manner shown upon the Complainant's Exhibit No. 4*d*, and forever maintain and operate the same" or otherwise, and the court erred in affirming the decree of the court below in this regard.

XXVII.

The court erred in finding and decreeing that the appellee was "entitled to make such connections between tracks which it now owns, or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company, as shall be necessary or convenient in the operation of its own line, or as may be necessary or convenient in its business as a common carrier, and forever maintain and operate such connection," and the court erred in affirming the decree of the court below in this regard.

XXVIII.

The court erred in finding and decreeing that the appellant should be pervented and restrained from interfering in any way with said full, equal and joint use of said property as aforesaid, by the appellee, its successors, lessees and assigns, and the right to make such connections, and the court erred in affirming the decree of the court below in this regard.

XXIX.

The court erred in ordering and requiring and mandatorily enjoining the appellant to permit the free use and right of said property as in said decree directed and stated, and the court erred in affirming the decree of the court below in this regard.

XXX.

The court erred in ordering and decreeing that the appellee was entitled to any use of aay of the appellant's property in said decree described, without the appellant's counsent, and the court erred in affirming the decree of the court below for this reason.

XXXI.

The court erred in granting the relief prayed for, or any relief because the appellee hath not by its charter corporate power or au-

hority to acquire or hold any right, title or interest in any of the ppellant's property in the State of Nebraska, and the court erred in ffirming the decree of the court below for this reason.

XXXII.

The court erred in granting to the appellee the right to use any of he appellant's property in the State of Nebraska because the appel-ee hath no corporate power or authority to use or exercise any do-minion over such property in the State of Nebraska, and the court erred in affirming the decree of the court below in this regard.

XXXIII.

That it was against the just rights of the appellant and the court erred in adjudged and decreeing that the bill of complaint of the appellee should not be dismissed at its costs, and the court erred in not reversing the decree of the court below and remanding this cause with instructions that appellee's bill of complaint be dis-missed at its costs.

Wherefore appellant Union Pacific Railroad Company prays and asks a reversal of this cause, and that the decree of the United States circuit court of appeals for the eighth circuit affirming the decree of the United States circuit court for the district of Nebraska be re-versed, with directions to dismiss the bill of complaint of appellee Mason City & Fort Dodge Railroad Company at its costs.

UNION PACIFIC RAILROAD COMPANY,
*Appellant,*

By JOHN N. BALDWIN, *Its Solicitor.*

W. R. KELLY, *Of Counsel.*

This assignment of errors was presented to me and considered by me before I allowed the appeal herein.

WALTER H. SANBORN,
*Circuit Judge.*

(Endorsed:) No. 1975. United States circuit court of appeals. Union Pacific R. R. Co., *vs.* Mason City & Fort Dodge R. R. Co. Assignment of errors. Filed Apr. 6, 1904, John D. Jordan, clerk.

(*Bond on Appeal.*)

And on the sixth day of April, A. D. 1904, a bond on appeal was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

UNION PACIFIC RAILROAD COMPANY, Appellant,
*vs.*
MASON CITY & FORT DODGE RAILROAD COMPANY, Appellee.
} Bond on Appeal.

Know all men by these presents: That we, Union Pacific Railroad Company, as principal, and Frank Murphy and Ben B. Wood of the county of Douglas, State of Nebraska, as sureties, are held and firmly bound unto Mason City & Fort Dodge Railroad Company in the sum of five thousand dollars ($5,000.00), to be paid to the said Mason City & Fort Dodge Railroad Company; we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 4th day of March, 1904.

Whereas the appellant Union Pacific Railroad Company in the above entitled suit has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the circuit court of appeals for the eighth circuit on the 29th day of February, 1904.

Now therefore, the condition of this obligation is such that if the said appellant shall prosecute said appeal to effect, and answer all costs if it fail to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

UNION PACIFIC RAILROAD COMPANY,
By JOHN N. BALDWIN, *Its Attorney, Principal.*
FRANK MURPHY,
BEN B. WOOD, *Sureties.*

STATE OF NEBRASKA,
*County of Douglas,* } *ss:*

Frank Murphy and Ben B. Wood, sureties named in the foregoing bond, each being first duly sworn, each for himself says:

That he is a resident and freeholder in the county of Douglas,

State of Nebraska, and is worth the sum of five thousand dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

FRANK MURPHY.
BEN B. WOOD.

Subscribed in my presence and sworn to before me by the said Frank Murphy and Ben B. Wood this 24th day of March, 1904.

FRANK T. HAMILTON,
[SEAL.] *Notary Public in and for the County of Douglas and State of Nebraska.*

Commission expires May 29, 1908.

UNITED STATES OF AMERICA, } ss:
*County of Douglas, State of Nebraska,* }

I, George H. Thummel, clerk of the United States circuit court for the district of Nebraska, hereby certify that the sureties names in the foregoing bond are fully good for the amounts for which they have qualified, and that if said bond was presented to me for approval, I would approve the same.

GEORGE H. THUMMEL,
[SEAL.] *Clerk of the United States Circuit Court for the District of Nebraska,*
By JOHN NICHOLSON, *Deputy.*

The foregoing bond is approved this 6th day of April, 1904.

WALTER H. SANBORN,
*United States Circuit Judge, Eighth Circuit.*

(Endorsed:) No. 1975. In the United States circuit court of appeals, eighth circuit. Union Pacific Railroad Company, appellant, vs. Mason City & Fort Dodge Railroad Company, appellee. Bond on appeal. Filed Apr. 6, 1904, John D. Jordan, clerk.

(*Order Allowing Appeal.*)

And on the sixth day of April, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an order allowing an appeal in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, Decembe
Term, 1903.

WEDNESDAY, *April* 6, 1904.

UNION PACIFIC RAILROAD COMPANY, Appellant,
*vs.*
MASON CITY & FORT DODGE RAILROAD Company, Appellee.
} No. 1975. Order Allow ing Appeal.

It is hereby ordered that the appeal in the above entitled case t to the Supreme Court of the United States be and is hereby allowe as prayed, this 6th day of April, 1904.

(Signed) WALTER H. SANBORN,
*United States Circuit Judge, Eighth Circuit.*

(*Citation.*)

And on the eleventh day of April, A. D. 1904, a citation with ac knowledgment of service thereon, was filed in the clerk's office o said circuit court of appeals, in said cause, the original of which i hereto attached and herewith returned:

In the United States Circuit Court of Appeals for the Eighth Circui

UNION PACIFIC RAILROAD COMPANY, Appellant,
*vs.*
MASON CITY & FORT DODGE RAILROAD Company, Appellee.
} Citation on Appeal

The United States of America, eighth circuit, to Mason City & Fo Dodge Railroad Company, appellee:

You are hereby cited and admonished to be and appear in th Supreme Court of the United States, at the city of Washington, i the District of Columbia, thirty days after the date of this citatio pursuant to an appeal allowed and filed in the clerk's office of th United States circuit court of appeals for the eighth circuit, where Union Pacific Railroad Company is appellant, and you are appelle

to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Walter H. Sanborn, presiding judge of the United States circuit court of appeals for the eighth circuit, this 6th day of April, A. D. 1904.

WALTER H. SANBORN,
*Judge United States Court of Appeals, Eighth Circuit.*

Service of the above citation accepted, and receipt of copy thereof acknowledged, this 7th day of April, 1904.

F. F. KELLOGG,
J. M. WOOLWORTH &
W. D. McHUGH,
*Attorneys for Mason City & Fort Dodge Railroad Company, Appellee.*

[Endorsed:] No. 1975. United States circuit court of appeals. Union Pacific R. R. Co. *vs.* Mason City & Ft. Dodge R. R. Co. Citation on appeal. Filed Apr. 11 1904 John D. Jordan, clerk.

(*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the three volumes marked respectively "Pleadings and Orders" paged consecutively from page *a* to page 309, inclusive, and the two volumes of testimony, one being marked "Record Volume I" paged consecutively from page 1 to page 536, inclusive, and the other being marked "Record Volume II" paged consecutively from page 537 to 1077, inclusive, contain a full, true and complete transcript of the record, pleadings and proceedings, together with a copy of the opinion of the circuit court of appeals, in the case of Union Pacific Railroad Company, appellant, *vs.* Mason City and Fort Dodge Railroad Company, No. 1975, December term, 1903, as full, true and complete as the same remain on file and of record in my office.

I do further certify that the original citation with acceptance of service endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at office in the city of St.

Louis, Missouri, in the eighth circuit, this twenty-third day of April, A. D. 1904.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
*Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.*

Endorsed on cover: File No. 19,325. U. S. C. C. of appeals, 8th circuit. Term No. 243. Union Pacific Railroad Company, appellant, *vs.* Mason City and Fort Dodge Railroad Company. Filed April 7th, 1904. File No. 19,325.

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ORDER APPOINTING SPECIAL EXAMINER UNITED STATES CIRCUIT COURT, DISTRICT OF NEBRASKA.

November Term, Omaha, Nebraska, March 24, 1903.

Court opened pursuant to adjournment.

Present: Hon. Wm. H. Munger, Judge.

The following proceedings were had and done, to-wit:

Mason City & Fort Dodge Railroad Company, Complainant.
vs.
Union Pacific Railroad Company, Defendant.
} No. 55, Doc. V.

Upon the application by the counsel of the complainant in the above entitled cause, it appearing that said cause is at issue on bill and answer and replication, it is therefore

Ordered that Charles W. Pearsall of the City of Omaha and State of Nebraska be, and he hereby is, designated and appointed by the Court as Special Examiner, to take and report to the Court the evidence adduced or offered by the respective parties, with full authority as such Special Examiner, according to the rules and practice in such case made and provided; that said Examiner give immediate notice by mail to counsel of the respective parties of his appointment herein, and of the time and place when he will attend, for the purpose of hearing such testimony as may be adduced, and that notice be given by the respective counsel or solicitors to the opposite counsel or solicitors, or party, by mail, or personally, of the time and place of the examination, for such reasonable time as the examiner may fix or order in each case; that said Examiner may, when necessary or convenient for the respective parties, continue said hearings from time to time by order made and entered during any regularly appointed or noted hearing had hereunder; that said Examiner may, in his discretion, when necessary or convenient for the respective parties or witnesses, hold such hearings, or any thereof, and receive testimony in behalf of either party at such times and such places, within or without the District of Nebraska, as he may designate and appoint by

giving special notice to the respective parties, or their solicitors, or by order made and entered at any regularly appointed or noted hearing held hereunder, notice of such time and place of hearing also to be given by the respective counsel or solicitors to the opposite counsel or solicitors or parties as provided by this order; that all testimony adduced pursuant hereto be taken in the ordinary manner under oath, and, when completed, be reported by said Examiner, together with all and several the proceedings had before him to this Court, and filed with the Clerk thereof, in accordance with the rules and practice of this Court.

By the Court:
W. H. MUNGER,
Judge.

Dated March 24th, 1903.

Endorsed: Filed March 24, 1903.
Geo. H. Thummel, Clerk.

United States of America, }
District of Nebraska. } ss.

I, Geo. H. Thummel, Clerk of the Circuit Court of the United States for the District of Nebraska, do hereby certify the above and foregoing to be a true and correct copy of the Journal Entry of the proceedings of said Court, in the above entitled action as the same appears of record in my office.

Witness my hand and the seal of said Court at Omaha in said District, this twenty-fourth day of March A. D., 1903.

Geo. H. Thummel,
Clerk.

[SEAL]

ORDER AS TO NUMBER OF DAYS NOTICE TO BE GIVEN OF THE TAKING OF TESTIMONY.

IN THE CIRCUIT COURT OF THE UNITED STATES, WITHIN AND FOR THE DISTRICT OF NEBRASKA.

Mason City & Fort Dodge Railroad Company,
Complainant,
vs.
Union Pacific Railroad Company,
Defendant.
} ORDER.

On application of the above named complainant, the defendant consenting thereto, it is

Ordered, that, unless otherwise specially ordered, five days' notice of the time and place of the examination of witnesses in the above entitled cause shall be given by the respective solicitors to the opposite counsel, or solicitor or party.

Dated this 30th day of March, 1903.

Chas. W. Pearsall,
Special Examiner in the above entitled cause.

Endorsed: Filed March 30, 1903.
Geo. H. Thummel, Clerk.

GENERAL NOTICE AS TO TIME OF BEGINNING THE TAKING OF TESTIMONY.

IN THE CIRCUIT COURT OF THE UNITED STATES, WITHIN AND FOR THE DISTRICT OF NEBRASKA.

Mason City & Fort Dodge Railroad Company,
Complainant.
vs.
Union Pacific Railroad Company,
Defendant.
} NOTICE.

Notice is hereby given that on Wednesday the 8th day of April, 1903, at 10 a.m., in the north Federal Court Room in the Post Office Building in the City of Omaha, in the District aforesaid, the examination of witnesses and the taking of testimony in the above entitled cause will be begun and be continued from day to day.

Dated this 1st day of April, 1903.

Chas. W. Pearsall,
Special Examiner.

Service of above confessed for complainant April 1st, 1903.

W. D. McHugh,
Solicitor for Complainant.

Endorsed: Filed April 8, 1903.
Geo. H. Thummel, Clerk.

NOTICE AS TO TAKING OF TESTIMONY ON PART OF COMPLAINANT.

IN THE CIRCUIT COURT OF THE UNITED STATES, WITHIN AND FOR THE DISTRICT OF NEBRASKA.

Mason City & Fort Dodge Railroad Company,
Complainant.
vs.
Union Pacific Railroad Company,
Defendant.
} NOTICE.

To the Union Pacific Railroad Company, to W. R. Kelly, its counsel, and J. N. Baldwin, its solicitor:

You and each of you are hereby notified, that on Wednesday the 8th day of April, 1903, at the north Federal Court Room, in the Federal Building in the City of Omaha, in the District aforesaid, at 10 o'clock a.m. of said day, the complainant in the above entitled cause will begin the examination of witnesses and the taking of testimony, in the above entitled cause before Charles W. Pearsall, Special Examiner in the above entitled cause, said examination of witnesses and the taking of said testimony to be continued from day to day thereafter.

Frank B. Kellogg,
James M. Woolworth,
William D. McHugh,
Solicitors for Complainant.

Dated this 1st day of April, 1903.

RETURN ON SERVICE OF WRIT.

United States of America,
District of Nebraska.
} ss.

I hereby certify and return that I served the annexed Notice on the therein-named W. R. Kelly, Counsel of Union Pacific Railroad Company, and J. N. Baldwin, Solicitor of said company by leaving a true and correct copy thereof at the office of the legal department of said

Union Pacific Railroad personally at Omaha in said District the 1st day of April, A. D. 1903.

T. L. Mathews,
U. S. Marshal.
By John O. Moore,
Deputy.

RETURN ON SERVICE OF WRIT.

United States of America, } ss.
District of Nebraska. }

I hereby certify and return that I served the annexed Notice on the therein-named Union Pacific Railroad Company by handing to and leaving a true and correct copy thereof with Horace G. Burt, President of said company, personally at Omaha in said District on the 1st day of April, A. D. 1903.

T. L. Mathews,
U. S. Marshal.
By John O. Moore,
Deputy.

Omaha, Neb., April 8, 1903. 10 o'clock a. m.

Pursuant to notices hereinbefore set forth parties met in north Federal Court Room in the Postoffice Building, Omaha, Nebraska.

There were present and appearing for complainant, Frank B. Kellogg and W. D. McHugh.

There was present and appearing for defendant, John N. Baldwin.

The matter came on for hearing on the application of defendant for an adjournment of the taking of testimony to a later day.

Defendant filed affidavit of John N. Baldwin in support of said application.

Complainant filed affidavit of Frank B. Kellogg in resistance to said application.

The taking of testimony was then adjourned until April 20, 1903, at 10 o'clock a. m., at the same place as designated in the notices hereinbefore referred to.

It was agreed by and between counsel for the parties hereto that all witnesses subpœnaed for this date and place should appear on April 20, 1903, as per adjournment hereof, without further subpœna or notification.

Omaha, Neb., April 20, 1903. 10 o'clock a. m.

Pursuant to adjournment parties met in north Fe
eral Court Room in the Postoffice Building, Omaha, Ne

There were present and appearing for complainan
Frank B. Kellogg, James M. Woolworth and W.
McHugh.

There were present and appearing for defendan
John N. Baldwin.

The following proceedings were had, to-wit:

A stipulation was filed, which is as follows:

UNITED STATES CIRCUIT COURT, DISTRICT OF NEBRASKA

Mason City & Fort Dodge Railroad Company,
Complainant.
vs.
Union Pacific Railroad Company,
Defendant.

It is stipulated by and between the complainant an
the defendant in the above entitled action as follows:

That the testimony to be taken in this cause may
taken by the Examiner in shorthand and reduced to typ
writing, and the parties expressly waive the reading
said testimony over to the witnesses in the presence of th
Examiner and the counsel of the respective parties, an
waive the signature of the witnesses thereto.

It is further stipulated that the testimony so take
may be by said Examiner printed from time to time, an
the printed copy thereof used by him for his return to th
Court, and that a sufficient number of copies of said test
mony may be printed to use in any court of appeal, an
that unless required by the Court, no re-print of said te
timony shall be made, but the printed copies may be use
in any Court to which said cause shall go by appeal,
otherwise, and that the cost of printing said record sha
be taxed in the same manner as though printed under th
direction of the Clerk of the Court.

It is further stipulated that all maps introduced i
this cause may be used on any hearing thereof in the Ci
cuit Court of the United States for the District of N

braska without printing the same or causing extra copies to be made, and that in any Court of Appeals to which said cause may be taken by appeal, or otherwise, the said original maps may be certified up and used in any hearing of said cause without printing or making extra copies thereof, unless required by the rules and practice of the Court.

(Signed) W. D. McHugh and J. M. Woolworth
Frank B. Kellogg,
Attorneys for Complainant.
W. R. Kelly and
John N. Baldwin,
Attorneys for Defendant.

Horace G. Burt, being duly called and sworn as a witness on behalf of complainants, testified as follows:

Direct Examination.

By Mr. Frank B. Kellogg.

Q. Give your name and official position with the Union Pacific Railroad Company?

A. Horace G. Burt, President of the U. P. Railroad Company.

Q. How long have you been President of the Union Pacific Railroad Company?

A. A little over five years.

Q. Who has custody of the contracts of the Union Pacific Railroad Company?

A. Mr. Young, Erastus Young, Auditor, General Auditor.

Q. Where is his office?

A. Omaha.

Q. Have you the contract made between the city of Omaha, County of Douglas, and the old Union Pacific Railroad Company, organized under the Act of Congress?

A. No.

Q. Do you know whether any official, any of the officials have been able to find any such contract?

A. No.

Q. Have they made search for it, do you know?

Objected to as incompetent, immaterial and irrelevant, and for the further reason that the record shows that the Auditor of the Union Pacific Company has been

served with a subpœna *duces tecum* to bring the papers requested of this witness.

MR. KELLOGG: I don't care to press the question.

Q. There is attached to the bill of complaint in this case the Union Depot contract, or I call it the Union Depot contract, it is the contract by which various railroad companies use your station and station grounds, being two contracts an original and a supplemental contract. You are familiar with those contracts?

A. Yes, sir.

Q. What companies have signed that contract?

A. The Chicago and Northwestern, the Chicago, Milwaukee & St. Paul Railway Company, Illinois Central, Missouri Pacific, Chicago, Rock Island & Pacific, Union Pacific. The Wabash is also using the station under a tentative arrangement in conformity with the general arrangement made by all the companies.

Q. Does the Fremont, Elkhorn & Missouri Valley Railway Company use it?

A. No.

Q. Have they a contract by which they have the right to use it?

A. No.

Q. You say the Wabash tentative arrangement is in conformity with the contract under which the other companies use it?

A. Except as to the term of the contract. It is expected that they will take the same contract as to the term as the other roads.

Q. Does the Omaha Company use the Union Pacific station and terminals?

A. No.

Q. How do they get into the Union Station?

Objected to as incompetent, irrelevant and immaterial.

A. They don't get into it.

Q. Do their trains run in here in connection with the Northwestern?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. No.

Q. In connection with any company, do the trains of the Omaha Company run to the Union Station?

A. No.

Q. Please state how it is that the through trains of the Chicago, Minneapolis & Omaha Company, from St. Paul, run into the Union Station?

A. When they reach Sioux City they become the trains of the Chicago & Northwestern Railway Company and as such trains they enter the Union Station.

Q. You have no contract arrangements then with the Omaha Company itself?

A. No, sir.

Q. How about the Sioux City & Pacific?

A. No.

Q. Is the Sioux City & Pacific Railroad Company a separate corporation, do you know?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

MR. KELLOGG: Well, I don't know as Mr. Burt would know about that.

Q. Now, Mr. Burt, where does the Chicago, Rock Island & Pacific Railway Company connect with your line in Council Bluffs, or does that company connect its tracks with yours in Council Bluffs?

A. Yes.

Q. Where; near the Union Pacific Transfer Station?

A. Yes.

Q. What other company's tracks connect with your line in Council Bluffs?

A. The same companies that use the passenger station at Omaha, and also the Kansas City, St. Joe & Council Bluffs, and the Chicago, Burlington & Quincy roads. I believe that comprises all of them.

Q. Now at South Omaha, where does the Chicago, Rock Island & Pacific Company's railroad connect with yours?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. About a mile west of the South Omaha depot—the Union Pacific Railroad Company's depot—at South Omaha.

Q. At South Omaha, where does the tracks of the F. E. & M. V. Railroad connect with yours?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. Don't connect with the Union Pacific at South Omaha, at all.

Q. Isn't there a physical connection with the tracks of the Fremont, Elkhorn & Missouri Valley Railroad at South Omaha, with the Union Pacific?

A. No.

Q. Well, what was formerly the Elkhorn, the Fremont, Elkhorn & Missouri Valley line—Railway Company's line—connects with your line at South Omaha, doesn't it?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. No.

Q. I show you a railway map and also a city map of South Omaha, marked "Plaintiff's Exhibit 4 b." What track is this marked in a light color, between the track, marked "F., E. & M. V. R. R. and U. P. R. R.?"

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. Those are tracks belonging to the Chicago & Northwestern Railway Company, double track there.

Q. That double track there connects with the Union Pacific track near the Burlington & Missouri River overhead crossing, does it not?

A. Yes, sir.

Q. And connects with the F. E. & M. V. Railroad tracks a short distant west, is that westerly from the tracks of the Union Pacific Railroad Company, does it not?

A. Yes.

Q. When was that track put in there, as near as you can recollect?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. Within the last year.

Q. You say that is owned by the Chicago & Northwestern Railroad Company?

A. Yes, sir.

Q. You were formerly connected with the Elkhorn Company, were you not?

A. Yes.

Q. And that company's tracks connect with the tracks of the Omaha Belt Line and with the Union Stock Yards tracks at South Omaha, do they not?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. I am unable to say.

Q. What is your answer, Mr. Burt?

A. I am unable to say, without going on the ground. There is connection with the tracks of the Union Stock Yards, but I don't know of any connection, although there may be one, with the Belt Line.

Q. There is one with the Union Stock Yards Company tracks?

A. Yes, sir.

Q. And your tracks connect with the Stock Yards tracks?

A. Yes, sir.

Q. The tracks of the Union Pacific Railway Company connect with the tracks of the Union Stock Yards Company at South Omaha?

A. Yes, sir.

Q. Then the only connection that you recollect of between the Fremont, Elkhorn & Missouri Valley Railroad and the Union Pacific Railroad Company's tracks at South Omaha, is the track owned by the Chicago & Northwestern Railway Company at the present time?

A. Yes, sir. And I understand also that these tracks marked F., E. & M. V. are now Chicago & Northwestern Company Railway Company tracks; they are all Chicago & Northwestern Company's tracks.

Q. Now, do you know when the Chicago & Northwestern purchased the Fremont, Elkhorn & Missouri Valley Railroad Company's property in Nebraska?

A. No, I don't.

Q. Well, you know that it is only within the last year that the Chicago & Northwestern Railway Company took over, by purchase or otherwise, the property of the Fremont, Elkhorn & Missouri Valley Railway Company, do you not, Mr. Burt?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. Yes.

Q. About what time, do you recollect?

A. I don't remember the time, some time within the last six months.

Q. Previous to that time, the tracks of the Fremont,

Elkhorn & Missouri Valley Railway Company, which reached South Omaha, terminated at a point on this map, complainant's Exhibit 4b, at the north end of the tracks of the Union Stock Yards Company, did it not?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. That is my understanding.

Q. Now, does the Union Pacific Railroad Company's tracks connect with the Omaha Belt Line Railway Company's tracks at South Omaha?

A. In the vicinity of South Omaha.

Q. Where?

A. I think at South Omaha—the dividing line coming somewhere—that line track connects at that point (indicating) at the intersection of E Street as shown by this map.

Q. About the intersection of E Street? (As shown on map complainant's Exhibit 4b.) Where do the tracks of the Missouri Pacific Railway Company connect with the tracks of the Union Pacific Railroad Company, at or near South Omaha?

A. About a mile east of Gilmore.

Q. Gilmore, Nebraska?

A. Yes, sir.

Q. Mr. Burt, have you brought with you the contracts, under which these various companies used the tracks and depots of the Union Pacific Railroad Company between Council Bluffs and South Omaha, or near South Omaha?

A. No.

Q. Why not?

A. Because I didn't know, because I wasn't asked to bring them.

MR. BALDWIN: At the time of the last adjournment there was no subpœna *duces tecum* served on Mr. Burt.

Q. Now the Chicago, Rock Island & Pacific Railway Company use the tracks of the Union Pacific from its connection in Council Bluffs, to the connection mentioned by you at South Omaha, Mr. Burt.

MR. BALDWIN: Objects as incompetent, immaterial and irrelevant.

A. Yes.

Q. Their contract is the one attached to the complaint, and dated the first of May, 1890, is it not?

A. I can't say.

Q. You know of but one contract with that company, do you?

A. No.

Q. Does the Chicago, Milwaukee & St. Paul Railway Company also use the same property which the Rock Island Company uses, under its contract, dated in 1890?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. They have the right to use the Union Pacific tracks, certain Union Pacific tracks between—as far west as South Omaha, same as the Rock Island.

Q. And they do use it?

A. Yes.

Q. So that then you say that all their trains are run over the tracks of the Union Pacific Railroad Company between those points?

A. No.

Q. I mean all the trains they run into Omaha.

A. No, the Milwaukee don't run its passenger trains west of Omaha.

Q. So that the trains that the Rock Island Company and the Milwaukee Company run into Omaha, they run over your tracks?

A. Yes, sir.

Q. Now, what part of the property of the Union Pacific between South Omaha and Council Bluffs does the Missouri Pacific Railway Company use?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. Between Omaha and Council Bluffs—the Missouri Pacific Company uses for its freight trains that part of the track which lies between the point of connection one mile east of Gilmore, and the point of connection with its Belt Line near the north edge of the corporation limits of South Omaha, that I pointed out just now on the map, near the intersection of E street; and for its passenger trains it uses the tracks from the same point of connection east of Gilmore to the Union Depot, and also has the right under their—that is all under that contract.

Q. Now what right has it to use any part of the property under other contracts?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. It has another contract to use the tracks of the company from the Union Station through its north yard —the Union Pacific Company's north shop yard, to a connection with the Missouri Pacific tracks—Belt Line tracks in the vicinity of Cass street.

Q. That is, do I understand you that it has the right to use your tracks from South Omaha up through Omaha, leaving the—or turning off onto the old line at about Twentieth street and running north to the connection with their track in the north part of the City of Omaha?

A. It has a right to use those tracks from Gilmore to the Union Station for its loaded trains—loaded passenger trains—and in order to reach their terminals, which are located in the north end of the town, they have the right to run their empty trains to and from.

Q. Passenger trains only?

A. Passenger trains only.

Q. The right to use your tracks and the use of your tracks at the present time for its freight trains terminates at at the present time, at about what street in South Omaha?

A. At about E street. Although I think part of the track on this company's—the Union Pacific Company's right of way there (indicating on the map) belongs to the Union Pacific Company, so that the connection might be more properly said to be about D street, one block north of E street.

Q. What part of the Union Pacific property, between the eastern terminus in Council Bluffs, and South Omaha, does the Wabash Railway Company use with its trains?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. They use the part between Council Bluffs and the Union passenger station in Omaha.

Q. For what kind of trains?

A. Passenger trains.

Q. No freight trains?

A. No.

Q. Do you remember how long that contract has been in force?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. Oh, I think they have been using those tracks about two years.

Q. What part does the Chicago, Burlington & Quincy Railroad Company use between the same points?

A. It has the right to run certain passenger trains between Council Bluffs and their track connection, which is east of—just east of their passenger station here in Omaha.

Q. That is to their connection with your tracks between the west end of the bridge and their passenger station?

A. Yes.

Q. That is only for passenger trains?

A. That is all.

Q. And they do actually run their passenger trains over that track?

A. Yes, sir.

Q. And have for how long?

A. Oh, three years.

Q. What part of the Union Pacific property between the same points does the Kansas City, St. Joe & Council Bluffs Railway Company use?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

(Question withdrawn).

Q. What part of the Union Pacific property between its eastern terminus in Council Bluffs and South Omaha—what part of that property does the Kansas City, St. Joe & Council Bluffs Railway Company use?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. This Union Pacific Company has no contract with the Kansas City, St. Joe Company at all. It is only with the Burlington Company.

Q. Their trains come in under that Burlington contract?

A. Yes.

Q. Well they do actually run their trains over the same property over which the Chicago, Burlington & Quincy runs their trains?

A. Well they call them their trains, we only know them as their trains.

Q. But the Kansas City & St. Joe trains that come to Council Bluffs do actually run in to the Burlington depot over your tracks?

A. The trains that run between Kansas City and Omaha run in there, but I don't know whose trains they are. Those trains run over the bridge, but we have only one contract, and that is with the Burlington Company, covering these trains.

Q. What part of the Union Pacific Company's property, between its eastern terminus in Council Bluffs and South Omaha, does the Illinois Central Company use?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. The Illinois Central does not use any portion of the property between Council Bluffs—yes—only that portion comprised in the Union Station and depot grounds. They run no trains over the bridge at all.

Q. They run their trains over the Belt Line Railway —over the Omaha Bridge & Terminal bridge and tracks into Omaha?

A. Yes.

Q. And where do they connect with your line in Omaha?

A. Well, I could tell by reference to a map.

Q. (Displaying map to the witness) I show you complainant's Exhibit 2, being a city map of the City of Omaha. Please state with reference to this map, about where the Illinois Central, running its trains over the Belt Line, connects with your tracks, over the bridge and terminal tracks, connects with your tracks?

A. I should say within a point—at a point, within a mile—perhaps three quarters—northeast of the shop buildings, of the Union Pacific Company.

Q. Then it runs its trains from there over your tracks to the Union Station, does it?

A. Yes, over the Union Pacific tracks.

Q. The Chicago & Northwestern Railway Company, what part of the Union Pacific property, between its eastern terminus in Council Bluffs, and South Omaha, does the Chicago & Northwestern Railway Company use?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. From the point of intersection of their tracks with the tracks of this company on Union Avenue in Council Bluffs.

Q. To what point?

A. To South Omaha.

Q. To South Omaha?

A. Yes, to the same point as the Rock Island and Milwaukee Companies use.

Q. They run their passenger and freight trains over those tracks and use the Union Depot?

A. Run their passenger trains over the tracks as far as the Union Station, and then their switching trains over the whole distance that they have the right to use.

Q. All these companies pull their trains over the respective parts of these tracks with their own engines, do they not?

A. Yes.

Q. You say they run their switching trains; is that what you would call yard grounds, all the way to South Omaha?

A. No.

Q. You use switching crews during the entire distance, don't you?

A. Not necessarily.

Q. Well you have switch engines?

A. Yes.

Q. Which handle trains all the way between the eastern terminus in Council Bluffs and South Omaha, do you not?

A. Yes.

Q. I show you Exhibit 4 b; are you generally familiar with the property that the Union Pacific owns in Council Bluffs and Omaha and South Omaha?

A. Yes.

Q. I show you a piece of property colored a dark color, or red, bounded by Lincoln Avenue on the north and Martha Street on the south, and 27th on the west and 24th Street on the east. Is the property colored red property of the Union Pacific Railroad Company?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. I am in doubt about that piece right in there (indicating). I will have to consult our own maps, but that this and that belongs to the Union Pacific Railroad Company—

Q. Please explain the property which the Union Pacific owns and that which you have a doubt about, describing it from the map, because it is the only way to get it into the record.

A. I have a doubt about that property lying between the Burlington and Union Pacific rights of way. The balance I have no doubt about.

Q. The balance is owned by the Union Pacific, is it?

A. Yes.

Q. On this map the right of way strip between the red lines from the western end of this map to the bridge is Union Pacific property, is it?

A. I want to refer to our own maps in order to say that each piece belongs to the Union Pacific. In general, I think that is correct, but to be specific I cannot without consulting our own records.

Q. Now, Mr. Burt, does the Union Pacific Railroad Company own any property which does not appear of record, lying between the same points?

MR. BALDWIN: Objects as immaterial, incompetent and irrelevant.

Q. Well, I will say between the bridge—the Union Pacific bridge across the Missouri River and the southerly point shown on this map as the city limits of Omaha.

MR. BALDWIN: Objects as immaterial, incompetent and irrelevant and not the best evidence.

A. I don't know.

Q. Has the Union Pacific purchased any property in that vicinity along the line of these tracks within a year or two?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

MR. BURT: The city limits of South Omaha?

MR. KELLOGG: Yes.

MR. BURT: Does the city limits show on this map?

MR. KELLOGG: Here it is.

Q. You know of no property which has been purchased by the Union Pacific, whether the title is in the

Union Pacific or not, between the Missouri River bridge and the city limits of South Omaha, as shown on this map?

A. I don't know whether this map is correct or not, but I think our property is all recorded.

Q. All of record?

A. Yes, I don't know of any that we own that is not of record.

Q. You don't of any that you have contracted for?

A. No.

Q. Have you authorized anyone to purchase any property along the tracks between these points, to be conveyed hereafter to the Union Pacific?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. No.

CROSS EXAMINATION WAIVED.

Witness excused.

Mr. Horace I. Bettis is here called and sworn as a witness on the part of complainants. Testified as follows:

DIRECT EXAMINATION.

By Mr. Frank B. Kellogg:

Q. Mr. Bettis give us your full name and your official position with the Union Pacific Railroad Company.

A. Horace I. Bettis, Assistant General Auditor of the Union Pacific Railroad Company.

Q. How long have you been Assistant General Auditor of the Union Pacific Railroad Company?

A. About a year and a half. I don't remember the date. It was since in July about a year ago.

Q. Prior to that were you at work in the Auditor's office?

A. Yes, sir.

Q. How long have you been in the employ of the Union Pacific Railroad Company or its predecessor?

A. Since July 25, 1898.

Q. Who is the General Auditor?

A. Erastus Young.

Q. During his absence who has control of the office?

A. I do.

Q. In whose custody are the contracts of the Union Pacific Railroad Company kept?

A. The General Auditor.

Q. And during the absence of the General Auditor you have custody of those contracts?

A. Yes, sir.

Q. Have you a contract in your possession or in the auditor's office, between the City of Omaha, the County of Douglas and the Union Pacific Railroad Company organized under the law of Congress?

A. The one referred to in the subpœna?

Q. Yes, sir.

A. No, Sir.

Q. Have you made search for such contract?

A. Yes, sir.

Q. It is not in the files of the Union Pacific Railroad Company?

A. Not in Omaha at least.

Q. Is there any other place where they keep those contracts?

A. I don't know. Possibly there is.

Q. You don't know of any other place?

A. No, sir.

Q. Is there any other official of the company who would be likely to have such a contract?

A. I don't know.

Q. The proper place for it would be in your office?

A. Yes, sir.

Q. And it is not there?

A. No, sir.

Q. Do your records show any reference to any such contract?

A. No, sir.

Q. Have you the records of the first company organized under the law of Congress?

A. We have records of their contracts and I don't find it there.

Q. And you also have records of the contracts of the consolidated company that followed that?

A. All contracts.

Q. And they show nothing in relation to that?

A. No, sir.

Q. So you are unable to find it?

A. Yes, sir, unable to find it.

Q. Have you a copy of it?

A. No, sir.

Q. Have you the original Saunders deed by which certain depot property was deeded to the Union Pacific Railroad Company?

THE WITNESS TO MR. BALDWIN: Is that the original, Mr. Baldwin?

MR. BALDWIN: Yes (handing the paper to the witness).

A. Yes, sir.

Q. Will you let me see it a moment.

MR. KELLOGG: I offer in evidence the original deed made by Alvin Saunders, trustee, to the Union Pacific Railroad Company, dated the 20th day of January, 1872, together with the certificate of record thereon, showing said deed to be recorded on February 2, 1872, at 2:15 o'clock p. m., recorded in Book 12 of Deeds, Douglas county, Nebraska, at page 220.

Instead of reading the above described deed into the record it is stipulated and agreed that the foregoing deed commonly known as the Saunders deed, is correctly, fully and accurately set forth in the complainant's bill of complaint.

Q. That deed was among the records of the Union Pacific Railway Company when it was taken over by the Union Pacific Railroad Company?

A. I only know it was there when I went in there.

Q. Well, was it among the deeds and titles of the Union Pacific Railroad Company.

A. Yes.

Q. Have you the contract or contracts under which the Chicago, Milwaukee & St. Paul uses any part of the Union Pacific bridge and terminals?

A. I have a copy of the contract of the Union Pacific Railroad with the Chicago, Milwaukee & St. Paul Railway Company, dated May 26, 1898, for the use of the tracks between Council Bluffs and South Omaha.

MR. KELLOGG: Will you let me see it please. I offer in evidence this contract dated May 26, 1898, between the Union Pacific Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company.

MR. BALDWIN: I object to this as incompetent, irrelevant and immaterial. This objection is not applied to any formality, but I simply mean under the issues; it being admitted that this is the contract as mentioned.

The contract referred to was read in evidence, and is as follows:

AGREEMENT No. 159. E. Y. Jun 10, 1898. R. A. Jun 14, 1898.

It is hereby certified, that at the monthly meeting of the Board of Directors of the Chicago, Milwaukee & St. Paul Railway Company, duly called and held pursuant to notice, at the office of the company in the city of New York on the 26th day of May, 1898, at which meeting a quorum of said Board of Directors was present and voting, the following action was, among other things, had and taken;

"The Vice-President submitted draft of a proposed "agreement with the Union Pacific Railroad Company, of "lease for 999 years from the first day of May, 1898, of "joint possession and use of certain main and passing "tracks between the terminus of said companies' tracks in "the City of Council Bluffs, in the State of Iowa, to a line "drawn at a right angle across said Union Pacific Com- "pany's tracks within one and one-half miles southerly of "its passenger station at South Omaha, in the State of "Nebraska, including the bridge over which said tracks "extend across the Missouri River, between the City of "Council Bluffs and Omaha; and of certain other tracks, "rights and privileges, as set forth in the agreement.

"On motion, it was

"Resolved, That the agreement as submitted be ap- "proved, and that the officers of the company be author- "ized to execute, and deliver the same."

In witness whereof, I have hereunto set my hand and affixed the seal of said company, at its office in the City of Milwaukee, Wisconsin, this third day of June, A.D. 1898.

[SEAL] P. M. MYERS, Secretary.

Chicago, Milwaukee and St. Paul
Railway Company.
Incorporated 1863.

AGREEMENT No. 159.

E. Y.
Jun 10, 1898.

Articles of Agreement made and entered into by Union Pacific Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Utah, hereinafter called the Pacific Company, party of the first part, and Chicago, Milwaukee & St. Paul Railway Company, a corporation created and existing under and by virtue of the laws of the State of Wisconsin and a domestic corporation of the State of Nebraska, hereinafter called the St. Paul Company, party of the second part, witnesseth:

ARTICLE I.

Section 1. In consideration of the rentals, charges and agreements herein set forth to be by said second party well and truly paid, kept and performed, the party of the first part hereby lets the party of the second part into the full, equal and joint possession and use of its main and passing tracks, now located and established, or which may be hereafter located and established, between the terminus of said tracks in the City of Council Bluffs, in the State of Iowa, to a line drawn at a right angle across said tracks within one and one-half miles southerly of its passenger station at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri River between the City of Council Bluffs and Omaha; of a connection with the tracks of the General Passenger Station of the first party about to be constructed in Omaha; of the side or spur track leading from its main track to the lower grade of the Pacific Company's sidings and spur tracks in Omaha and such extensions as may be hereafter made; and of side tracks in Omaha on which to receive from or deliver to the party of the second part freight that may be handled through the warehouses or switched by the party of the first part; of the connections with the Union Stock Yards tracks in South Omaha; and of conveniently located grounds in South Omaha on which the party of the second part may construct, maintain and exclusively use a track or tracks, aggregating three thousand feet in length, for the storage of cars and other pur-

poses; for a term of nine hundred and ninety-nine (999) years, commencing on the first day of May, in the current year; for which possession and use the party of the second part covenants, promises and agrees to pay to the order of the party of the first part, monthly, during the continuance of said term, the sum of Three Thousand, Seven Hundred and Fifty Dollars ($3,750), with a proportion of the costs and expenses actually incurred during the month for which such payment is made, in supplying engines with water, and in maintaining and repairing that portion of said main track jointly used and situated east of the east end of said bridge in the City of Council Bluffs and in paying taxes and assessments legally laid and levied thereon, which proportion shall be to the aggregate of the amount so paid as the number of wheels per mile operated during the same month by the party of the second part over said tracks or any part thereof, shall be to the whole number of wheels operated per mile over the same tracks during the same period; the party of the second part will also pay a like wheelage proportion of the interest at the rate of four per centum per annum upon the actual cost of extraordinary improvements upon or across the roadway and tracks covered by this section when made in compliance with the lawful enactment of a municipal authority; which sums and payments the party of the first part agrees to receive as full compensation for such possession and use.

Sec. 2. The party of the second part shall have the right to make such connections between its own tracks and the tracks leased from the party of the first part as shall be necessary or convenient in the operation of its own line or lines in connection with such leased tracks, or as may be necessary in conducting its business as a common carrier. If the parties cannot agree as to the location of any of the side tracks above mentioned, and the connection thereof with the main track of the party of the first part and with the tracks of the party of the second part, or as to the line to be established across the main tracks of the party of the first part near South Omaha, or as to any connection which shall be made between the tracks of the party of the first part and the party of the second part, or as to the location of grounds upon which

the storage track or tracks above mentioned may be constructed, the same shall be determined by referees to be appointed in the manner hereinafter prescribed.

Sec. 3. The party of the first part will when, and so long and as often as it may be required so to do by the party of the second part, receive, deliver and store local freight transported to and from Omaha by the party of the second part, in the same manner and with the same promptness and care with which it receives, delivers and stores freights transported by its own cars and trains, for which the party of the second part will pay a reasonable compensation, not exceeding that charged at the same time for like services to any other railway company. If there shall be any differences between the parties as to the manner in which such service is rendered or the compensation to be charged therefor, such differences may be determined by referees in the manner hereinafter prescribed. Nothing herein contained shall be so construed as to prohibit the termination of the arrangement in this paragraph defined upon the election of the party of the second part.

Sec. 4. The party of the first part will secure to the party of the second part the right to use the General Passenger Station, the erection of which is proposed at the City of Omaha, upon terms, in every respect as favorable as those which shall be accorded to any other company which has or may acquire the right of such use.

Sec. 5. The rental hereinbefore provided for shall commence to accrue on the first day of May, 1898.

## Article II.

Section 1. The party of the first part shall have the care and custody of all the premises aforesaid; shall maintain the same, and make all betterments, improvements, repairs, renewals, and replacements thereof; and shall, through its train dispatchers, order and direct the movement of all locomotives, cars and trains on any part thereof, under such rules, regulations and time schedules as may be from time to time adopted by the duly authorized officers of the parties hereto, and said trains shall in

every respect be treated as the first party's trains of similar class, and shall have equal preference over trains of inferior class belonging to any party occupying said premises.

Sec. 2. It is further mutually understood and agreed that in case of a collision between the engines, cars or trains of the parties hereto while on any of the tracks aforesaid, or in case of any injury to the property of the parties hereto, or in case of any injury to property of third parties, or in case of injury to persons, the party whose employes are in fault shall be responsible for and shall settle and pay the entire loss and damage caused thereby; and in case such collision or accident is caused by the fault of the employes of both parties, or by one of the joint employes of said parties, then each party shall bear, settle and pay all the loss and damage or injury caused thereby to its own property, or the property under its control, or to its employes, or its passengers; and for the purpose of this agreement, the first party's train dispatchers, telegraph operators or other employes, whose duties are directly connected with the movement of the trains of both parties over said leased lines, shall be considered the joint employes of both parties hereto. If, however, the party of the second part shall notify the party of the first part that any joint employe is negligent or incompetent, then the party of the first part shall be liable to the party of the second part for all damages thereafter resulting to its property, employes, and to property under its charge, and to its passengers, caused by the negligence or incompetence of such joint employe. It is mutually understood and agreed that the party of the first part shall not be liable for any loss or damage occurring on said leased tracks caused by the acts or omissions of the sole employes of the party of the second part, or by the acts or omissions of the sole employes of any railway company, other than the party of the first part; nor shall the party of the first part be liable for any loss or damage to the trains of the party of the second part caused by a collision with trains of any other company which the party of the first part may let into the joint use of said tracks, unless such collision shall be caused by the negligence of the sole employe or employes of the party of the first part. If the

parties hereto cannot agree as to their liability in the case of collision or other casualty as aforesaid, then the matter shall be submitted to arbitrators chosen as hereinafter provided, and the decision of such arbitrators shall be final and binding on the parties hereto.

Sec. 3. The party of the second part, its successors, grantee, or assigns may at any time elect to terminate the lease contained in these articles, which election shall take effect three years from the date on which written notice of such election shall be delivered to the party of the first part, its successors, grantee or assigns, at its general office.

Sec. 4. Any matter of difference which may arise between the parties to this contract as to its construction or as to any violation of its provisions, or refusal to perform any duties that it may be alleged that it imposes or as to any sum claimed to be due under its provisions from one party to the other, or any matters herein expressly declared to be proper subjects for reference, which cannot be amicably adjusted, may, on the demand of either, be submitted to three disinterested persons experienced in railway operation, as arbitrators. The party demanding such reference shall give to the other party notice of such demand, stating specifically the question to be submitted for decision and naming a person, who has the required qualifications, to act as one referee. If at the expiration of ten days from the receipt of said notice the party receiving it has not notified the party demanding the reference of its nomination of its second referee having like qualifications, the party making the demand may make such selection. The first and second referee shall select the third. When the board is completed the referees shall fix a day and place for the hearing, of which the parties shall be severally notified. If the two referees chosen shall be unable to agree upon the third referee, such third referee may be appointed upon ten days' notice, on motion of either party, by a Judge of the Circuit or District Court of the United States for the Distrist of Nebraska. After hearing the testimony and arguments which may be submitted by either party, the referees if they unanimously agree upon the award, shall state it in writing, which when delivered to both parties shall be binding and conclusive upon each,

and each party hereby agrees to be conclusively bound thereby. If they cannot unanimously agree they shall by like agreement select two additional referees having like qualifications; if the two additional referees cannot be unanimously agreed upon, they may be appointed by a Judge of the Circuit or District Court of the United States for the District of Nebraska, and to the board thus constituted shall be submitted a statement of the facts as to which there is a unanimous agreement between the first three referees selected as above, and all the testimony pertaining to the matters in dispute, as to which said referees cannot agree. The award of the majority of the five referees shall be in writing, and when delivered to the parties shall be as final and as conclusive as the award by the first chosen referees would have been. If either party refuses to keep and perform such award the adverse party may enforce the same by appropriate proceeding in any court of law or equity and shall have the right upon its own election, expressed in writing, to declare this indenture terminated and of no further effect or obligation, which termination shall take effect one year from the date on which notice thereof is served on the delinquent party.

Sec. 5. No difference which may arise as to the construction or performance of any of the covenants, promises and agreements herein contained shall effect, while it remains undetermined, the joint use of the railroad tracks in the manner in which the parties have theretofore enjoyed their use; it shall continue, and settlements and payments shall be made as before the existence of such disagreement; and when it is finally determined, by reference or otherwise, payments and settlements shall be made by the respective parties as may be required by the award of the referees; or as provided in the agreement or adjustment, as the case may be.

Sec. 6. The covenants, promises and agreements contained in this agreement shall be binding upon the successors of the respective parties.

In testimony whereof, the parties hereto have each, by the authority of their respective boards of directors, hereto subscribed their corporate names by their respective presidents and affixed hereto their respective corporate seals, attested by their respective secretaries this 26th day

of May, in the year of our Lord One Thousand Eight Hundred and Ninety-Eight.

Union Pacific Railroad Company,
By Horace G. Burt,
President.

[SEAL]
Union Pacific Railroad Company.
Utah, 1897.
Attest: Alex Millar,
Secretary.

Chicago, Milwaukee & St. Paul Railway Company,
By Roswell Miller,
President.

[SEAL]
Chicago, Milwaukee & St. Paul
Railway Company.
Incorporated 1863.
Attest: P. M. Myers,
Secretary.

State of New York, }
County of New York. } ss.

Be it remembered that on this 26th day of May, A. D. 1898, before me, the undersigned, a notary public within and for New York county, personally appeared Horace G. Burt, President of Union Pacific Railroad Company, to me personally known to be such president, and to be the same person who executed the foregoing instrument for and on behalf of said company, and duly acknowledged the same to be his free act and deed, as such president, and the free act and deed of said company, for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal at my office, in said County and State, the day and year above written.

J. B. Maxwell,
Notary Public,
N. Y. Co.

[SEAL]
J. B. Maxwell,
Notary Public,
City and County of New York.

State of Illinois, } ss.
County of Cook. }

Be it remembered, that on this 3rd day of June, A. D. 1898, before me, the undersigned, a Notary Public within and for Cook County, personally appeared Roswell Miller, President of the Chicago, Milwaukee and St. Paul Railway Company, to me personally known to be such President, and to be the same person who executed the foregoing instrument, for and on behalf of said Company, and duly acknowledged the same to be his free act and deed, as such President, and the free act and deed of said Company, for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal at my office, in said County and State, the day and year above written.

W. D. Millard,
Notary Public.

[SEAL]
W. D. Millard,
Notary Public,
Cook County, Ill.

(Endorsed on Back.)

Agreement No. 159.
Union Pacific Railroad Co.
with
Chicago, Milwaukee & St. Paul Railway Co.
Agreement.
Dated May 26, 1898.
For Use of Tracks Between Council Bluffs and South Omaha.
Auditor of Disbursements.
Jul 14, 1898.
U. P. R. R. Co.
Brief Made 7-19-98.
R. Anderson, M. Aud. Dis.

MR. KELLOGG: I offer in evidence the contract between the Union Pacific Railroad Company and the Chicago & Northwestern Railway Company, dated the 26th day of May, 1898.

MR. BALDWIN: I object to this as incompetent, immaterial and irrelevant, it being admitted that the contract

is the contract it purports to be, the objection applying to the issues of the case and not to any formality in the contract.

The contract referred to was read in evidence, and is as follows:

AGREEMENT No. 158.

E. Y.
Jun 14, 1898.
R. A.
Jun 17, 1898.

Articles of Agreement made and entered into by Union Pacific Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Utah, hereinafter called the Pacific Company, party of the first part, and Chicago and Northwestern Railway Company, a corporation created and existing under and by virtue of the laws of the States of Illinois, Wisconsin and Michigan, hereinafter called the Northwestern Company, party of the second part, witnesseth:

ARTICLE I.

Section 1. In consideration of the rentals, charges and agreements herein set forth to be by said second party well and truly paid, kept and performed, the party of the first part hereby lets the party of the second part into the full, equal and joint possession and use of its main and passing tracks, now located and established, or which may be hereafter located and established, between the terminus of said tracks in the City of Council Bluffs, in the State of Iowa, to a line drawn at a right angle across said tracks within one and one-half miles southerly of its passenger station at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri River between the City of Council Bluffs and Omaha; of a connection with the tracks of the General Passenger Station of the first party about to be constructed in Omaha; of the side or spur track leading from its main track to the lower grade of the Pacific Company's sidings and spur tracks in Omaha, and such extensions as may be hereafter made; and of side tracks in Omaha on which to receive from or deliver to the party

of the second part freight that may be handled through the warehouses or switched by the party of the first part; of the connections with the Union Stock Yards tracks in South Omaha; of conveniently located grounds in South Omaha, if any such grounds of the said first party may, in its judgment, be available for such purpose, on which grounds the party of the second part may construct, maintain and exclusively use a track or tracks, aggregating three thousand feet in length, for the storage of cars and other purposes, and of a connection with the Fremont, Elkhorn & Missouri Valley Railroad, as now, or as hereafter may be located and constructed in the southwest quarter of Section 33, Township 15 North, Range 13 East, 6th Principal Meridian; for a term of Nine Hundred and Ninety-Nine (999) years, commencing on the first day of June, in the current year; for which possession and use the party of the second part covenants, promises and agrees to pay to the order of the party of the first part, monthly, during the continuance of said term, the sum of Three Thousand Seven Hundred and Fifty Dollars ($3,750), with a proportion of the costs and expenses actually incurred during the month for which such payment is made, in supplying engines with water, and in maintaining and repairing that portion of said main track jointly used and situated east of the east end of said bridge in the City of Council Bluffs, and in paying taxes and assessments legally laid and levied thereon, which proportion shall be to the aggregate of the amount so paid as the number of wheels per mile operated during the same month by the party of the second part over said tracks or any part thereof, shall be to the whole number of wheels operated per mile over the same tracks during the same period; the party of the second part will also pay a like wheelage proportion of the interest at the rate of four per centum per annum upon the actual cost of extraordinary improvements upon or across the roadway and tracks covered by this section when made in compliance with the lawful enactment of municipal authority; which sums and payments the party of the first part agrees to receive as full compensation for such possession and use.

Sec. 2. The party of the second part shall have the

right to make such connections between its own tracks and the tracks leased from the party of the first part as shall be necessary or convenient in the operation of its own line or lines in connection with such leased tracks, or as may be necessary in conducting its business as a common carrier. If the parties cannot agree as to the location of any of the side tracks above mentioned, and the connection thereof with the main track of the party of the first part and with the tracks of the party of the second part, or as to the line to be established across the main tracks of the party of the first part near South Omaha, or as to any connection which shall be made between the tracks of the party of the first part and the party of the second part, the same shall be determined by referees to be appointed in the manner hereinafter prescribed.

Sec. 3. The party of the first part will when and so long and as often as it may be required so to do by the party of the second part, receive, deliver and store local freights transported to and from Omaha by the party of the second part, in the same manner and with the same promptness and care with which it receives, delivers and stores freights transported by its own cars and trains, for which the party of the second part will pay a reasonable compensation, not exceeding that charged at the same time for like services to any other railway company. If there shall be any differences between the parties as to the manner in which such service is rendered or the compensation to be charged therefor, such differences may be determined by referees in the manner hereinafter prescribed. Nothing herein contained shall be so construed as to prohibit the termination of the arrangement in this paragraph defined upon the election of the party of the second part.

Sec. 4. The party of the first part will secure to the party of the second part the right to use the General Passenger Station, the erection of which is proposed at the City of Omaha, upon terms, in every respect as favorable as those which shall be accorded to any other company which has or may acquire the right of such use.

Sec. 5. The rental hereinbefore provided for shall commence to accrue on the first day of June, 1898.

ARTICLE II.

Section 1. The party of the first part shall have the care and custody of all the premises aforesaid; shall maintain the same, and make all betterments, improvements, repairs, renewals, and replacements thereof; and shall, through the train dispatcher's order and direct the movements of all locomotives, cars and trains on any part thereof, under such rules, regulations and time schedules as may be from time to time adopted by the duly authorized officers of the parties hereto, and said trains shall in every respect be treated as the first party's trains of similar class, and shall have equal preference over trains of inferior class belonging to any party occupying said premises.

Sec. 2. It is further mutually understood and agreed that in case of a collision between the engines, cars or trains of the parties hereto, while on any of the tracks aforesaid, or in case of any injury to the property of the parties hereto, or in case of any injury to the property of third parties, or in case of injury to persons, the party whose employes are in fault shall be responsible for and shall settle and pay the entire loss and damage caused thereby; and in case such collision or accident is cause by the fault of the employes of both parties, or by one of the joint employes of said parties, then each party shall bear, settle and pay all the loss and damage or injury caused thereby to its own property, or to the property under its control, or to its employes, or its passengers; and for the purpose of this agreement, the first party's train dispatchers, telegraph operators or other employes whose duties are directly connected with the movement of the trains of both parties over said leased lines, shall be considered the joint employes of both parties hereto. If, however, the party of the second part shall notify the party of the first part that any joint employe is negligent or incompetent: then the party of the first part shall be liable to the party of the second part for all damages thereafter resulting to its property, employes, and to property under its charge, and to its passengers, caused by the negligence or incompetence of such joint employe. It is mutually understood and agreed that the party of the first part shall not be liable

for any loss or damage occurring on said leased tracks caused by the acts or omissions of the sole employes of the party of the second part, or by acts or omissions of the sole employes of any railway company, other than the party of the first part; nor shall the party of the first part be liable for any loss or damage to the trains of the party of the second part, caused by a collision with trains of any other company which the party of the first part may let into the joint use of said tracks, unless such collision shall be caused by the negligence of the sole employe or employes of the party of the first part. If the parties hereto cannot agree as to their liability in the case of collision or other casualty as aforesaid, then the matter shall be submitted to arbitrators chosen as hereinafter provided; and the decision of such arbitrators shall be final and binding on the parties hereto.

Sec. 3. The party of the second part, its successors, grantee, or assigns may at any time elect to terminate the lease contained in these articles, which election shall take effect three years from the date on which written notice of such election shall be delivered to the party of the first part, its successors, grantee or assigns, at its general office.

Sec. 4. Any matter of difference which may arise between the parties to this contract as to its construction or as to any violation of its provisions, or refusal to perform any duties that it may be alleged that it imposes or as to any sum claimed to be due under its provisions from one party to the other, or any matters herein expressly declared to be proper subjects for reference, which cannot be amicably adjusted, may, on the demand of either, be submitted to three disinterested persons experienced in railway operation, as arbitrators. The party demanding such reference shall give to the other party notice of such demand stating specifically the question to be submitted for decision and naming a person who has the required qualifications to act as one referee. If at the expiration of ten days from the receipt of said notice the party receiving it has not notified the party demanding the reference of its nomination of its second referee having like qualification, the party making the demand may make such selection. The first and second referee shall select the third. When the board is completed the referees shall fix a day and

place for the hearing, of which the parties shall be severally notified. If the two referees chosen shall be unable to agree upon the third referee, such third referee may be appointed upon ten day's notice, on motion of either party, by a judge of the Circuit or District Court of the United States for the District of Nebraska. After hearing the testimony and arguments which may be submitted by either party, the referees, if they unanimously agree upon the award, shall state it in writing, which, when delivered to both parties, shall be binding and conclusive upon each, and each party hereby agrees to be conclusively bound thereby. If they cannot unanimously agree they shall by like agreement select two additional referees having like qualifications; if the two additional referees cannot be unanimously agreed upon, they may be appointed by a judge of the Circuit or District Court of the United States for the District of Nebraska, and to the board thus constituted shall be submitted a statement of the facts as to which there is a unanimous agreement between the first three referees selected as above, and all the testimony pertaining to the matters in dispute, as to which said referees cannot agree. The award of the majority of the five referees shall be in writing and when delivered to the parties shall be as final and as conclusive as the award by the first chosen referees would have been. If either party refuses to keep and perform such award the adverse party may enforce the same by appropriate proceeding in any court of law or equity and shall have the right upon its own election, expressed in writing, to declare this indenture terminated and of no further effect or obligation, which termination shall take effect one year from the date on which notice thereof is served on the delinquent party.

Sec. 5. No difference which may arise as to the construction or performance of any of the covenants, promises and agreements herein contained, shall effect while it remains undetermined, the joint use of the railroad tracks in the manner in which the parties have theretofore enjoyed their use; it shall continue, and settlements and payments shall be made as before the existence of such disagreement; and when it is finally determined by reference or otherwise, payments and settlements shall be made by

the respective parties as may be required by the award of the referees; or as provided in the agreement or adjustment, as the case may be.

Sec. 6. The covenants, promises and agreements contained in this agreement shall be binding upon the successors of the respective parties.

In testimony whereof, the parties hereto have each by the authority of their respective boards of directors hereto subscribed their corporate names by their respective presidents and affixed hereto their respective corporate seals, attested by their respective secretaries this 26th day of May, in the year of our Lord One Thousand Eight Hundred and Ninety-Eight.

Union Pacific Railroad Company,
By Horace G. Burt,
President.

[SEAL]
Union Pacific Railroad Company.
Utah, 1897.

Attest: Alex. Millar,
Secretary.

Chicago and Northwestern Railway Company,
By Marvin Hughitt,
President.

[SEAL]
Chicago & Northwestern Railway Co.

Attest: J. B. Redfield,
Asst. Secretary.

State of New York, }
County of New York. } ss.

Be it remembered that on this 26th day of May, A. D. 1898, before me, the undersigned, a Notary Public within and for New York County, personally appeared Horace G. Burt, President of Union Pacific Railroad Company, to me personally known to be such president, and to be the same person who executed the foregoing instrument, for and on behalf of said company, and duly acknowledged the same to be his free act and deed, as such president, and the free act and deed of said company, for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand

and affixed my notarial seal at my office, in said county and state, the day and year above written.

J. B. Maxwell,
Notary Public, N. Y. Co.

[SEAL]
J. B. Maxwell,
Notary Public,
City and County of New York.

State of Illinois, } ss.
County of Cook. }

Be it remembered, that on this 9th day of June, A. D. 1898, before me, the undersigned, a Notary Public within and for said county, personally appeared Marvin Hughitt, President of the Chicago & Northwestern Railway Company, to me personally known to be such president, and to be the same person who executed the foregoing instrument, for and on behalf of said company, and duly acknowledged the same to be his free act and deed, as such president, and the free act and deed of said company, for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my notarial seal at my office, in said county and state, the day and year above written.

J. F. Cleveland,
Notary Public.

[SEAL]
J. F. Cleveland,
Notarial Seal, Cook Co., Ill.

(Endorsed on Back.)
Agreement No. 158.
Union Pacific Railroad Co.
with
Chicago & Northwestern Railway Co.
Agreement.
Dated————1898.
For Use of Tracks Between Council Bluffs and South Omaha.
Auditor of Disbursements.
Jul 14, 1898.
U. P. R. R. Co.
Brief Made, 7-19-98.
R. Anderson, M. Aud. Dis.
Copy Sent to Secretary, July 27, 1898.

Q. The contract between the Union Pacific Railroad Company, the Omaha & Republican Valley Railway Company, the Salina & Southwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Kansas & Nebraska Railway Company, attached to the bill of complaint, and dated May 1, 1890, is the only contract that you know of between the two companies under which they operate their trains over any part of the Union Pacific property?

A. Yes, sir.

DIRECT EXAMINATION.

Continued by Judge McHugh.

Q. Have you the contract under which the Missouri Pacific Railroad Company uses a portion of the Union Pacific tracks in Omaha?

A. The Missouri Pacific Railroad, what?

Q. Their contract under which they use a portion of your tracks between Omaha and South Omaha and the Union depot?

A. Yes, sir.

Q. Will you produce that, Mr. Bettis?

A. (Looking at contract). For trackage from Summit to Omaha passenger station and Cass street and from Gilmore—trackage Gilmore to Summit and South Omaha Station.

Q. This contract constitutes the agreement under which the Missouri Pacific uses any and all portions of the property of the Union Pacific used by the Missouri Pacific between Gilmore and the west approach of the bridge, the west end of the bridge?

A. No, there is a contract for the use of the Omaha Passenger Station.

Q. This covers everything of your property in Omaha and South Omaha used by the Missouri Pacific, except the Union Depot contract?

A. Yes.

JUDGE MCHUGH: We now offer in evidence the articles of agreement between the Union Pacific Railroad Company and the Missouri Pacific Railway Company, dated the 25th day of April, 1900.

MR. BALDWIN: Defendants object to this as incompe-

tent, immaterial and irrelevant, it being admitted that the contract is the contract that it purports to be, the objection applying to the issues of the case and not to any formality in the contract.

The contract referred to is read in evidence and is as follows:

(Endorsed on Cover.)
Original.
U. P. R. R. Co.
Agreement.
Audit No. 1576.

Agreement,
Dated April 25th, 1900.
Union Pacific Railroad Company,
with
The Missouri Pacific Railway Company
For Trackage Between
Gilmore Junction and Summit Junction.
Copy sent to Secretary.
2-11-1902.
Gen'l Auditor's Office,
Nov. 6, 1901.
U. P. R. R. Co.
Noted: F. B. Southard, A. P. A.
4-14-1902.
Noted: H. J. Stirling, Freight Auditor.
4-23-1902.
President's Office.
Union Pacific R. R. Co.
Apr 26, 1900.
Omaha, Neb.
Copies Received, R. Anderson, W. H. S.
12-11-1901.
Auditor of Disbursements.
Dec. 11, 1901.
U. P. R. R. Co.

Date—Parties.

Articles of Agreement, made and entered into, in duplicate, this 25th day of April, A. D. 1900, by and between Union Pacific Railroad Company, a corporation

created and existing under and by virtue of the laws of the State of Utah (hereinafter called the Pacific Company), party of the first part, and the Missouri Pacific Railway Company, a corporation created and existing under and by virtue of the laws of the States of Missouri and Kansas (hereinafter called the Missouri Company), party of the second part, Witnesseth:

ARTICLE I.

Term—Connection with and use of tracks.

Section 1. In consideration of the rents charges, and agreements herein set forth, to be by said Missouri Company well and truly paid, kept and performed, the said Pacific Company hereby lets and grants to said Missouri Company, for the term ending June 30, 1949, the right to connect the railroad tracks at Gilmore Junction now occupied by it, at the place hereinafter designated, with the tracks of the Pacific Company, and to run, manage, and operate the passenger trains and freight trains, engines and cars, of all classes, of said Missouri Company, in the transaction of its business as a common carrier, over, along, and upon that part and so much of the tracks of the Pacific Company, including the use of the necessary side and passing tracks for the passing of trains of the Pacific Company, between the points described as follows:

Description of tracks—Mileage.

Commencing at the junction of the railroad track or tracks of the Pacific Company with the track or tracks now occupied by the said Missouri Company, at Gilmore Junction, a point in the southwest quarter of the southeast quarter of Section twenty-seven (27), Township fourteen (14) north, Range thirteen (13) east of the Sixth Principal Meridian, indicated by the letter "F" on the map of the premises embraced in this agreement, hereto attached, marked "Exhibit A," and made a part hereof; running thence northwesterly along and upon said track or tracks of the Pacific Company, as indicated upon said map by the yellow lines, to a connection at Summit Junction with the track or tracks belonging to or occupied by the Missouri Company, at a point in the southeast quarter of the southwest quarter of Section thirty-three (33), Town-

ship fifteen (15) north, Range thirteen (13) east of the Sixth principal meridian, marked "G" on said attached map, a distance of 5.43 miles. Provided however, that as to the passenger trains or passenger engines, of the Missouri Company, operated over the track or tracks of the Pacific Company between Gilmore Junction and the Pacific Company's General Passenger Station grounds at Omaha, the route of operation of such trains or engines shall be from the point "F" upon said "Exhibit A," over and along the Pacific Company's track or tracks to the point indicated by the letter "E" upon said "Exhibit A," hereto annexed, at which point "E" a connection is made with the trackage privileges of the Missouri Company, held by it under its contract with the Pacific Company of date April 25th, A. D. 1900; and the trackage and other charges in respect to such passenger-train or passenger-engine operation, under the terms of this contract, shall be computed for the track or tracks used therefor, between said points "F" and "E" on said "Exhibit A," and for a distance of 5.17 miles.

Rates to be paid for trackage.

Sec. 2. For such occupation and use of tracks, and for the rights and privileges herein granted, the Missouri Company covenants, promises, and agrees to pay to the Pacific Company, monthly, during the said term, upon bills rendered therefor by the Pacific Company, the sum of forty (40) cents per train mile for each and every train, or twenty (20) cents per engine mile for each and every engine without cars attached thereto, moved over, along, or upon the tracks herein demised.

Trackage rates subject to revision every 10 years.

The above mentioned rates for the said trackage privileges shall be subject to change or revision at the end of each ten-year period of this contract, at the instance and request of either of the parties hereto, and any differences between the parties in respect thereto shall be subject to arbitration as hereinafter provided.

Rates for coal and water—Monthly settlements.

The Missouri Company further agrees to pay the actual cost, including freight charges and handling, plus ten per cent., for coal furnished and delivered on the

tenders of the engines of the Missouri Company, and fifty (50) cents per engine tank for each and every tank of water furnished by the Pacific Company, while on the leased premises; all of which necessary supplies of coal and water the Pacific Company agress to furnish to the Missouri Company, unless prevented by scarcity; all statements of accounts to be rendered monthy, and to be paid on or before the 20th day of the month succeeding that in and for which the charges accrued.

Division of expenses for watchmen, flagmen, signalmen, etc.—Expense of interlocking plant at Gilmore.

Sec. 3. The Missouri Company will also pay, monthly, during the entire period of this agreement, a proportion of the cost of such watchmen, flagmen, switch tenders and signalmen, and also of the cost of such signals, gates, lights, and of such other devices as may be necessary for the proper protection and operation of the tracks described in "Exhibit A," hereto annexed, or that may be required by state or municipal authority, whether as to streets and alleys, public highways, or as to the crossing of railroads now, or that may be hereafter constructed over said tracks of the Pacific Company; and the proportion of such cost in any month, to be borne by the Missouri Company, shall be to the aggregate amount of such cost in that month as the number of cars operated during the same month by the Missouri Company over said tracks, between Gilmore Junction and Summit Junction, shall be to the whole number of cars operated thereover during the same period. In computing the charges, as per this section required, an engine and tender shall be computed as two cars. Provided, however, that the Missouri Company shall pay one-half the cost of installing, maintaining and operating the interlocking plant at Gilmore Junction until such time as another company may be permitted to connect with the tracks of the Pacific Company at or near said point and join in the use of said plant, when such cost of installment, maintenance and operation shall be re-apportioned, and the Missouri Company's portion shall be one-third the cost thereof.

Date effective.

Sec. 4. The rental and charges hereinbefore pro-

vided for shall commence to accrue on the twenty-ninth day of April, A. D. 1900.

Trackage privileges defined.

Sec. 5. The Missouri Company may use the trackage privileges hereby granted to it solely in the prosecution and transaction of its own business, and it shall not assign the rights hereby granted to it, or any part thereof, or any interest therein, to any other company or person, nor will it sublet any of the privileges hereby granted to it, or any part or parcel thereof, to any other person or company, nor will it grant or allow, directly or indirectly, the advantage or use of the trackage privileges hereby conferred upon it to any other company or person; and any attempted sale, assignment, or underletting or transfer of said right, title, or interest of the Missouri Company herein, or any part thereof, shall, at the option of the Pacific Company, render this agreement void, and the Pacific Company thereupon may exclude the Missouri Company and all persons or corporations claiming through said company from the occupation, use and enjoyment of the rights and facilities granted by this contract; provided, however, that the provisions of this section shall not be construed to prevent the Missouri Company from hauling in its own trains the cars of other companies with which it shall have arrangements for through service and divisions of revenue based thereon, and when said cars shall be taken into its trains at a point not less than twenty-five (25) miles distant from the City of Omaha.

ARTICLE II.

Use of tracks by other railroad companies.

Section 1. The Pacific Company may admit any other company operating a railroad, to the joint possession and use of tracks and premises embraced in this agreement, upon such terms and conditions as it may deem fit and proper; provided, however, that such additional burden placed upon said tracks and premises shall not deprive the Missouri Company of its reasonable and proper use thereof for the purposes for which such use is hereby granted.

Number of cars per train and power of engines.

Sec. 2. Each train moved by the Missouri Company

over the demised track or tracks, shall be limited to the number of cars which can be drawn over the same by one ordinary ten-wheel engine; provided, however, that when extraordinary conditions render two or more such engines necessary for the hauling of its trains, which ordinarily could be drawn by one such engine, such additional power may be used while such conditions continue; and provided, further, that if the Missouri Company shall elect to use, on its own line in its regular business, engines having greater power than the ten-wheel engines now in use, said company shall have the right to use engines having equal power on the demised tracks, but when such engines are used the compensation to be paid shall be increased in proportion to the increase in power.

Other tracks may be substituted on 90 days' notice.

Sec. 3. Said Pacific Company may, at its own cost and for its own convenience, on giving ninety (90) days written notice to the Missouri Company of its intention so to do, furnish other track or tracks in lieu of the track or tracks herein described, for the accommodation of the Missouri Company's trains as herein provided, and upon such substitute track or tracks the rights, privileges, duties, and liabilities, of the respective parties hereto, shall be precisely the same as in respect to the tracks heretofore specifically shown and described, it being understood that such substituted track or tracks, as far as reasonably practicable to provide the same, shall be as conveniently located and situated for the operation and transaction of the business of the said Missouri Company as the track or tracks herein described, and that the charge made or to be made by the Pacific Company in respect to such substitute track or tracks shall be the same as the charge made for the use of the track or tracks and for the trackage privileges hereinbefore specifically described. On the expiration of such written notice, as herein provided, the Missouri Company agrees to cease the use of the track or tracks herein specifically described, and thereafter to use the track or tracks substituted in lieu thereof.

## Article III.

Use of passenger station at South Omaha.

Section 1. The Pacific Company hereby agrees t allow the Missouri Company the use of its passenger sta tion at South Omaha, and to handle the passenger busi ness of the Missouri Company thereat; for which use and accommodation the Missouri Company agrees to pay to the Pacific Company an agreed monthly rental of eight dol lars ($8.00) and also the proportion of the monthly work ing expense of said passenger station that the number o tickets sold for the Missouri Company each month bears t the whole number of tickets sold in the same month a said station.

Handling of freight business at South Omaha.

Sec. 2. The Pacific Company agrees to provide th facilities for, and to handle, the freight business of th Missouri Company at the Pacific Company's freight depo at South Omaha; and the Missouri Company agrees to pa to the Pacific Company, as compensation therefor, a agreed monthly rental of ————————dollars ($ .00) and, in addition thereto fifty (50) cents per ton, with minimum of ————————dollars ($ .00) per month, fo all freight handled through the freight house, and tw dollars ($2.00) per car for carload freight switched to th Pacific Company's team tracks or to industries reached b the Pacific Company's tracks, the return empties to b handled free.

Endorsed on margin of above paragraph, in lead pe cil, are these words: "This section inoperative."

Rentals subject to revision.

Sec. 3. The rentals and charges in this Article spec fied, for the use of South Omaha passenger and freigh station facilities of the Pacific Company by the Missou Company, shall be subject to revision from time to tim on thirty (30) days' written notice from either party the other; and in case of differences arising between th parties hereto, resulting in disagreements in respect such rentals and charges, such differences shall be referr to arbitration, as hereinafter provided.

ARTICLE IV.

Local business excluded.

Section 1. Said Missouri Company agrees to do no passenger or freight business locally on the leased premises, and will give reasonable notice to prevent the entry of passengers into its trains for transportation locally on said leased premises; but if, despite such notice, such passengers do enter its trains and are transported locally between points on the leased premises, all fares for the transportation of such passengers shall be collected by said Missouri Company at the current tariff rates of the Pacific Company, and the full amount of fares so collected by the Missouri Company shall be accounted for and paid over monthly to the Pacific Company.

Sec. 2. Said Missouri Company also agrees to do no mail or express business locally on the leased premises, and to pay over to the Pacific Company all moneys that may be received by the Missouri Company for transportation of the United States mails or for any other service rendered to the Government, locally, on said premises.

## Article V.

Maintenance of tracks, movement of trains, etc.

Section 1. The Pacific Company shall have the care and custody of all the premises aforesaid; shall pay all taxes and assessments which shall be legally laid or levied thereon; shall maintain the same, and make all betterments, improvements, repairs, renewals and replacements thereof; and shall, through its superintendent, train dispatchers or other authorized officers, order and direct the movement of all locomotives, cars and trains on any part thereof, under such rules, regulations and time schedules as may be from time to time adopted by the duly authorized officers of the Pacific Company, and said trains shall, in respect to such movement, be treated as the Pacific Company's trains of similar class, and shall have equal preference over trains of inferior class belonging to any party occupying said premises.

Joint employes.

Sec. 2. It is hereby further mutually understood and agreed that all employes upon the line leased or demised, under and by virtue of this contract, who are to perform joint service for the parties hereto, shall act impartially

and fairly as between the parties in the discharge of all duties pertaining to the business of either of them; and if any such employe shall fail to act impartially as between the parties hereto, he shall be removed from employment upon the line covered by this agreement, upon reasonable cause shown therefor by the proper officer of the Missouri Company; and in case the Pacific Company refuses to remove such employe, the question of his removal shall be submitted to arbitration as hereinafter provided.

Sec. 3. Train dispatchers, operators, switchmen, sectionmen, watchmen, flagmen and signalmen, and such other persons as may be employed in the performance of the duties incident to the joint use and operation of the portion of railway covered by this agreement, while employed upon the demised premises, although paid by the Pacific Company, shall be considered as joint employes and shall assist the employes of either company, in case of derailment or other accident; and any casualty, loss or damage to either party, occasioned by the carelessness or default of joint employes, shall be borne by the party suffering the loss; the intention of this contract being to grant the Missouri Company the right to run its trains over the demised premises, but not to insure it against the usual hazard attending the moving of trains.

Accidents and casualties; liability for, etc.

Sec. 4. Each company shall be solely responsible for accidents and casualties occuring upon or to its engines, cars, and trains, arising out of any defects or failures in the track, structures, appurtenances, and appliances, or from misplacement of switches, mistakes in setting signals, errors of train dispatchers, telegraph operators, flagmen, switchmen, watchmen, or from any other cause whatever, except such as may be occasioned by the engines, cars or trains of both companies colliding through the fault of their trainmen, and in all such cases of collision, the company whose trainmen are at fault shall pay all damages accruing to the other company, to persons and to property; and in case such collision or accident is caused by the fault of the employes of both parties, or by one or more of the joint employes of said parties, then each party shall bear, sustain and pay all the loss and damage or injury caused thereby to its own property, or to the property under its control

or to its employes, or to its passengers: If, however, the Missouri Company shall notify the Pacific Company in writing that any joint employe is negligent or incompetent, then the Pacific Company shall be liable to the Missouri Company for all damages thereafter resulting to its property and employes, and to the property under its charge, and to its passengers, caused by the negligence or incompetence of such joint employe after notice given.

Liability under acts or omissions of employes.

It is mutually understood and agreed that the Pacific Company shall not be liable for any loss or damage occurring on said line of railway caused by the acts or omissions of the sole employes of the Missouri Company, or by the acts or omissions of the sole employes of any railway company other than the Missouri Company; nor shall the Pacific Company be liable for any loss or damage to the trains of the Missouri Company caused by a collision with trains of any other company which the Pacific Company may let into the joint use of said tracks, unless such collision shall be caused by the negligence of the trainmen of the Pacific Company.

Injuries to persons or property.

The Missouri Company hereby covenants and agrees to and with the Pacific Company that it will pay all damages for which a legal liability may arise against either party to this contract for or on account of injuries to persons or property which may accrue on or be occasioned by the engines, cars, or trains of said Missouri Company on the line of the Pacific Company, except in cases of collision through the negligence of trainmen of the Pacific Company.

Arbitration.

If the parties hereto cannot agree as to their liability in the case of collision or other casualty aforesaid, then the matter shall be submitted to arbitrators, chosen as hereinafter provided, and the decision of such arbitrators shall be final and binding on the parties hereto.

SECTION 5. Any matter of difference which may arise between the parties to this contract, as to its construction, or as to any violation of its provisions, or refusal to perform any duties that it may be alleged that it imposes, or as

to any sum claimed to be due under its provisions fro
one party to the other, or any matters herein expressl
declared to be proper subjects for reference, which cann
be amicably adjusted, may, on the demand of either, b
submitted to three disinterested persons experienced i
railway operation, as arbitrators. The party demandin
such reference shall give to the other party notice of suc
demand, stating specifically the question to be submitte
for decision, and naming a person who has the require
qualifications, to act as one referee. If, at the expiratio
of ten days from the receipt of said notice, the party r
ceiving it has not notified the party demanding the refe
ence, of its nomination of its second referee having lik
qualifications, the party making the demand may mak
such selection. The first and second referees shall sele
the third. When the board is completed the refere
shall fix a day and place for the hearing, of which the pa
ties shall severally be notified. If the two refere
chosen shall be unable to agree upon the third refere
such third referee may be appointed, upon ten day
notice, on motion of either party, by a judge of th
Circuit or District Court of the United States for th
District of Nebraska. After hearing the testimony an
arguments which may be submitted by either party, th
referees, if they unanimously agree upon the award, sha
state it in writing, which, when delivered to both partie
shall be binding and conclusive upon each, and each par
hereby agrees to be conclusively bound thereby. If th
cannot unanimously agree, they shall, by like agreemen
select two additional referees, having like qualification
if the two additional referees cannot be unanimous
agreed upon, they may be appointed by a judge of t
Circuit or District Court of the United States for the D
trict of Nebraska, and to the board thus constituted sh
be submitted a statement of the facts as to which there
a unanimous agreement between the first three refere
selected as above, and all the testimony pertaining to t
matters in dispute, as to which said referees cannot agre
The award of the majority of the five referees shall be
writing, and, when delivered to the parties, shall be
final and conclusive as the award of the first chosen ref
ees would have been. If either party refuses to keep a
perform such award, the adverse party may enforce t

same by appropriate proceedings in any court of law or equity, and shall have the right, upon its own election, expressed in writing, to declare this indenture terminated and of no further effect or obligation, which termination shall take effect one year from the date on which notice thereof is served on the delinquent party.

Performance of agreements pending arbitration.

SECTION 6. No difference which may arise as to the construction or performance of any of the covenants, promises and agreements herein contained, shall affect, while it remains undetermined, the use of the railroad tracks in the manner in which the parties shall have theretofore enjoyed their use; but such use shall continue, and settlements and payments shall be made as before the existence of such disagreement; and when it is finally determined, by reference or otherwise, payments and settlements shall be made by the respective parties as may be required by the award of the referees, or as provided in the agreement or adjustment, as the case may be.

Agreements binding upon successors.

SECTION 7. The covenants, promises and agreements contained in this agreement shall be binding upon the successors of the respective parties.

Date of execution.

IN TESTIMONY WHEREOF, the parties hereto have each, by the authority of their respective Boards of Directors, hereto subscribed their corporate names, by their respective President and Vice President, and affixed hereto their respective corporate seals, attested by their respective secretaries this 25th day of April, in the year of Our Lord One Thousand Nine Hundred.

Union Pacific Railroad Company,
By Horace G. Burt,
President.

[SEAL]

Union Pacific Railroad Company.
1897.

Attest: Alex Millar,
Secretary.

The Missouri Pacific Railway Company,
By C. G. Warner,
Vice President.

Attest: F. W. Ireland,
2nd Asst. Secretary.

[SEAL]

The Missouri Pacific Railway Company.
1880.
Union Pacific R. R. Co.
Approved as to Form.
W. R. Kelly, J. N. B.,
General Solicitor.

Union Pacific Railroad Company.
Agreement, Audit No. 1576.
With Missouri Pacific Ry. Co.
Date, April 25th, 1900.
Approved as to form and execution.
W. R. Kelly, J. N. B.,
General Solicitor.
Date Approved, Dec. 11, 1901.

JUDGE MCHUGH: We also offer in evidence the articles of agreement entered into between the Union Pacific Railroad Company and the Missouri Pacific Railway Company, dated the twenty-fifth day of April, 1900, for trackage to Union Pacific General Passenger Station, Omaha.

MR. BALDWIN: Defendants object to this as incompetent, irrelevant and immaterial, it being admitted that the contract is the contract that it purports to be.

The contract referred to was read in evidence, and is as follows:

Original.

U. P. R. R. Co. Agreement.
Audit No. 1575.
President's Office, Union Pacific R. R. Co.
Apr 26, 1900.
Omaha, Neb.
Copies Received,
R. Anderson, O. H. S., Aud. Disbmts.
12-11-1901.

Auditor of Disbursements.
Dec. 11, 1901.
U. P. R. R. Co.

Agreement.
Dated April 25th, 1900.
Union Pacific Railroad Company
with
The Missouri Pacific Railway Company.
For Trackage To
Union Pacific General Passenger Station,
Omaha.

Copy Sent to Secretary,
2-11-1902.

Gen'l. Auditor's Office.
Nov. 6, 1901.
U. P. R. R. Co.

Date—Parties.

ARTICLES OF AGREEMENT, made and entered into, in duplicate, this 25th day of April, A.D. 1900, by and between UNION PACIFIC RAILROAD COMPANY, a corporation created and existing under and by virtue of the laws of the State of Utah, (hereinafter called the Pacific Company), party of the first part, and THE MISSOURI PACIFIC RAILWAY COMPANY, a corporation created and existing under and by virtue of the laws of the States of Missouri and Kansas, (hereinafter called the Missouri Company), party of the second part, WITNESSETH:

ARTICLE I.

Terms—Description of tracks.

SECTION 1. In consideration of the rents, charges, and agreements herein set forth, to be by the said Missouri Company well and truly paid, kept and performed, the said Pacific Company hereby lets and grants to said Missouri Company for the term ending June 30, 1949, the right to connect the railroad tracks in Omaha now occupied by it, at the place hereinafter designated, with the tracks of the Pacific Company, and to run, manage, and operate the passenger trains and passenger equipment of said Missouri Company to and from the General Passenger Station of the Pacific Company, over, along and upon that part and so much of the tracks of the Pacific

Company lying within the City of Omaha, Nebraska, described as follows: Commencing at the junction of the railroad track or tracks of the Pacific Company, with the track or tracks now occupied by the said Missouri Company, near the intersection of California and Twelfth streets in the City of Omaha, at the point "A" indicated on the map of the premises embraced in this agreement, hereto attached, marked "Exhibit A," and made a part hereof; running thence southerly along and upon said track or tracks of the Pacific Company, as indicated upon said map by the yellow lines to a point marked "B;" thence via the connection at the point marked "C" to a connection with the tracks of the General Passenger Station at the point marked "D," at or near the west side of Twelfth street; also, commencing at a point upon the track or tracks of the Pacific Company, indicated by the letter "E" on the map hereto annexed and made a part hereof, marked "Exhibit B," connecting at said point "E" with the trackage privileges of the Missouri Company under a certain contract dated April 25th, A. D. 1900, between Union Pacific Railroad Company and The Missouri Pacific Railway Company; thence from said point "E" easterly along and upon the track or tracks of the Pacific Company, as shown in yellow lines upon said "Exhibit B," a distance of 2.78 miles, to a connection with the tracks of the General Passenger Station at the point marked "D," at or near the west side of Twelfth street; for which occupation and use Missouri Company covenants, promises and agrees to pay to the Pacific Company, monthly, during said term, upon bills rendered therefor by the Pacific Company, the following sums:

Revenue trains.

(1) For each loaded or revenue passenger train en route to or departing from the said General Passenger Station of the Pacific Company, at the rate of one dollar ($1.00) per train mile.

Empty or non-revenue trains.

(2) For each empty or non-revenue passenger train returning from said General Passenger Station to the tracks of the Missouri Company at the point maked "A"

on "Exhibit A," or at the point marked "E" on "Exhibit B," after discharging passengers at said station, and for each empty or non-revenue train going from the tracks of the Missouri Company from either of said points, "A," "Exhibit A" or "E," "Exhibit B," to said General Passenger Station, to take on passengers, twenty-five (25) cents per train mile.

Light engines.

(3) A light engine of the Missouri Company going to said General Passenger Station for a passenger train, or returning from said station from a passenger train, shall be deemed a non-revenue passenger train, and charged for at the rate provided for such trains.

(4) The routes of said trains shall be over the track or tracks as shown in yellow lines upon the maps thereof, hereto annexed, marked, respectivley, "Exhibit A" and "Exhibit B," as follows:

(a) As between the point "A" and the point "D," as shown on said "Exhibit A."

Description of tracks, "Exhibit A."

For the purpose of this agreement, the junction point of the Pacific Company's track or tracks with the track or tracks of the Missouri Company is indicated by the letter "A;" the most southerly point of the Pacific Company's tracks which may be used by the Missouri Company hereunder is indicated by the mark "B," and the junction point of the Pacific Company's tracks with the General Passenger Station ground tracks is marked by the letter "D." The distances between said points and which shall be used in computing the trackage charge herein specified to be paid by the Missouri Company, are as follows:

From the point "A" to the point "B".....1.87 miles
From the point "B" to the point "D".....0.51 "

In all between "A" and "D" via "B".....2.38 "

(b) As between the point "E" and the point "D" as shown on said "Exhibit B."

Description of tracks—Exhibit "B."

From the point indicated by the mark "E," on the Pacific Company's track or tracks, connecting thereat with

the trackage rights of the Missouri Company under a certain contract dated April 25, A. D. 1900; thence to the junction point of the said Pacific Company's tracks with the station ground tracks, indicated by the letter "D." The distance between said points, and which shall be used in computing the trackage charge herein specified to be paid by the Missouri Company, is as follows:
From the point "E" to the point "D".....2.78 miles

Trackage rates subject to revision every ten years.

The above mentioned rates for the said trackage privileges shall be subject to change or revision at the end of each ten-year period of this contract, at the instance and request of either of the parties hereto, and any differences between the parties in respect thereto shall be subject to arbitration, as hereinafter provided.

Division of expenses for watchmen, flagmen, signalmen, etc.

SECTION 2. The Missouri Company will also pay monthly during the entire period of this agreement a proportion of the cost of such watchmen, flagmen, switch tenders and signalmen, and also the cost of such signals, gates lights and of such other devices as may be necessary for the proper protection and operation of the tracks described in "Exhibit A" and "Exhibit B," hereto annexed, or that may be required by state or municipal authority, whether as to streets and alleys, public highways, or as to the crossing of railroads now, or that may be hereafter constructed over said tracks of the Pacific Company; and the proportion of such cost in any month, to be borne by the Missouri Company shall be to the aggregate amount of such cost in that month as the number of cars operated during the same month by the Missouri Company over said tracks shall be to the whole number of cars operated thereover during the same period. In computing the charge as in this section required, an engine and tender shall be computed as two cars.

Date effective.

SECTION 3. The rental and charges hereinbefore provided for shall commence to accrue on the 29th day of April A. D. 1900.

Tracks may be substituted on 90 days' notice.

SECTION 4. Said Pacific Company may, at its own cost and for its own convenience, on giving ninety (90) days' written notice to the Missouri Company of its intention so to do, furnish other track or tracks, in lieu of the track or tracks herein described, for the accommodation of the Missouri Company's passenger trains as herein provided, and upon such substitute track or tracks the rights, privileges, duties and liabilities of the respective parties hereto, shall be precisely the same as in respect to the tracks heretofore specifically shown and described, it being understood that such substituted track or tracks, as far as reasonably practicable to provide the same, shall be as conveniently located and situated for the operation and transaction of the business of the said Missouri Company as the track or tracks herein described, and that the charge made or to be made by the Pacific Company in respect to such substitute track or tracks shall be the same as the charge made for the use of the track or tracks, and for the trackage privileges hereinbefore specifically described. On the expiration of such written notice, as herein provided, the Missouri Company agrees to cease the use of the track or tracks herein specifically described, and thereafter to use the track or tracks substituted in lieu thereof.

Use of General Passenger Station, Omaha.

SECTION. 5. The Pacific Company will assure to the Missouri Company the right to use the General Passenger Station of the Pacific Company at Omaha, Nebraska, upon terms in every respect as favorable as those which shall be accorded to any other company which has or may acquire the right of such use.

Trackage Privileges Defined.

SECTION. 6. The Missouri Company may use the trackage privileges hereby granted to it solely in the prosecution and transaction of its own business to and from the General Passenger Station of the Pacific Company, and it shall not assign the rights hereby granted to it, or any part thereof, or any interest therein, to any other company or person, nor will it sublet any of the privileges hereby granted to it, or any part or parcel thereof, to any other person or company, nor will it grant or allow, directly or

indirectly, the advantage or use of the trackage privileges hereby conferred upon it to any other company or person; and any attempted sale, assignment, or underletting or transfer of said right, title, or interest of the Missouri Company herein, or any part thereof, shall, at the option of the Pacific Company, render this agreement void, and the Pacific Company thereupon may exclude the Missouri Company and all persons or corporations claiming through said Company from the occupation, use, and enjoyment of the rights and facilities granted by this contract; provided, however, that the provisions of this Section shall not be construed to prevent the Missouri Company from hauling in its own trains the passenger cars of other companies with which it shall have arrangements for through passenger service and divisions of revenue based thereon, and when said cars shall be taken into its trains at a point not less than (25) miles distant from the City of Omaha.

ARTICLE II.

Use of tracks by other railroads.

The Pacific Company may admit any other company operating a railroad, to the joint possession and use of tracks and premises embraced in this agreement, upon such terms and conditions as it may deem fit and proper; provided, however, that such additional burden placed upon said tracks and premises shall not deprive the Missouri Company of its reasonable and proper use thereof for the purposes for which such use is hereby granted.

ARTICLE III.

Local passenger business excluded.

SECTION 1. Said Missouri Company agrees to do no passenger business locally between South Omaha, Nebraska, and Omaha, Nebraska, on the tracks of the Pacific Company described herein, and will give reasonable notice to prevent the entry of passengers into its trains for transportation between said points; but, if, despite such notice, such passengers do enter its trains for transportation between said points, all fares for the transportation of said passengers on said trains between Omaha and South Omaha shall be collected by said Missouri Company

at the current tariff rates of the Pacific Company, and the full amount of fares so collected by the Missouri Company shall be accounted for and paid over monthly to the Pacific Company.

Mail and express.

SECTION 2. Said Missouri Company also agrees to do no mail or express business locally on the leased premises, and to pay over to the Pacific Company all moneys that may be received by the Missouri Company for transportation of the United States mails, or for any other service rendered to the Government, locally, on said premises.

## ARTICLE IV.

Maintenance of tracks, movement of trains, etc.

SECTION 1. The Pacific Company shall have the care and custody of all the premises aforesaid; shall maintain the same, and make all betterments, improvements, repairs, renewals and replacements thereof; and shall, through its train dispatchers, order and direct the movement of all locomotives, cars and trains, on any part thereof, under such rules, regulations and time schedules, as may be from time to time adopted by the duly authorized officers of the Pacific Company, and said trains shall, in respect to such movement, be treated as the Pacific Company's trains of similar class, and shall have equal preference over trains of inferior class belonging to any party occupying said premises.

Accidents and casualties, liability for, etc.

SECTION 2. Each company shall be solely responsible for accidents and casualties occurring upon or to its engines, cars and trains, arising out of any defects or failures of the track, structures, appurtenances and appliances, or from misplacement of switches, mistakes in setting signals, errors of train dispatchers, telegraph operators, flagmen, switchmen, watchmen, or from any other cause whatever, except such as may be occasioned by the engines, cars or trains of both Companies colliding through the fault of the trainmen, and in all such cases of collision, the company whose trainmen are at fault shall pay all damages accruing to the other company, to persons and to prop-

erty; and, in case such collision or accident is caused
the fault of the employes of both parties, or by one
more of the joint employes of said parties, then each pa
shall bear, settle and pay all the loss and damage or
jury caused thereby to its own property, or to the p
erty under its control, or to its employes, or to its pas
gers; and for the purpose of this agreement the Pa
Company's train dispatchers, telegraph operators,
men, watchmen, switch-tenders, and signalmen, or o
employes whose duties are directly connected with
movement of trains of both parties over such line of
way, shall be considered the joint employes of both par
hereto. If, however, the Missouri Company shall no
the Pacific Company in writing that any joint employ
negligent or incompetent, then the Pacific Company sh
be liable to the Missouri Company for all damages th
after resulting to its property and employes, and to
property under its charge, and to its passengers, cau
by the negligence or incompetence of such joint empl
after notice given.

Liability under acts or omissions of employes.

It is mutually understood and agreed that the Pa
Company shall not be liable for any loss or damage oc
ring on said line of railway caused by the acts or omissi
of the sole employes of the Missouri Company, or by
acts or omissions of the sole employes of any railway c
pany other than the Missouri Company; nor shall
Pacific Company be liable for any loss or damage to
trains of the Missouri Company caused by a collision w
trains of any other Company which the Pacific Comp
may let into the joint use of said tracks, unless such
lision shall be caused by the negligence of the trainme
the Pacific Company.

Injuries to persons or property.

The Missouri Company hereby covenants and ag
to and with the Pacific Company that it will pay all d
ages for which a legal liability may arise against ei
party to this contract for or on account of injurie
persons or property which may accrue on or be occasio
by the engines, cars, or trains of said Missouri Comp
on the line of the Pacific Company, except in cases of

lision through the negligence of trainmen of the Pacific Company.

Arbitration.

If the parties hereto cannot agree as to their liability in the case of collision or other casualty aforesaid, then the matter shall be submitted to arbitrators chosen as hereinafter provided, and the decision of such arbitrators shall be final and binding on the parties hereto.

SECTION 3. Any matter of difference which may arise between the parties to this contract, as to its construction, or as to any violation of its provisions, or refusal to perform any duties that it may be alleged that it imposes, or as to any sum claimed to be due under its provisions from one party to the other, or any matters herein expressly declared to be proper subjects for reference, which cannot be amicably adjusted, may, on the demand of either, be submitted to three disinterested persons experienced in railway operation, as arbitrators. The party demanding such reference shall give to the other party notice of such demand, stating specifically the question to be submitted for decision, and naming a person, who has the required qualifications, to act as one referee. If, at the expiration of ten days from the receipt of said notice, the party receiving it has not notified the party demanding the reference, of its nomination of its second referee having like qualifications, the party making the demand may make such selection. The first and second referees shall select the third. When the board is completed the referees shall fix a day and place for the hearing, of which the parties shall severally be notified. If the two referees chosen shall be unable to agree upon the third referee, such third referee may be appointed, upon ten days' notice, on motion of either party, by a Judge of the Circuit or District Court of the United States for the District of Nebraska. After hearing the testimony and arguments which may be submitted by either party, the referees, if they unanimously agree upon the award, shall state it in writing, which when delivered to both parties, shall be binding and conclusive upon each, and each party hereby agrees to be conclusively bound thereby. If they cannot unanimously agree they shall, by like agreement, select two additional referees, having like qualifications; if the two additional

referees cannot be unanimously agreed upon, they may
appointed by a Judge of the Circuit or District Court
the United States for the District of Nebraska, and to t
board thus constituted shall be submitted a statement
the facts as to which there is a unanimous agreeme
between the first three referees selected as above, and
the testimony pertaining to the matters in dispute, as
which said referees cannot agree. The award of t
majority of the five referees shall be in writing, and, wh
delivered to the parties, shall be as final and conclusi
as the award of the first chosen referees would have bee
If either party refuses to keep and perform such awar
the adverse party may enforce the same by appropria
proceedings in any court of law or equity, and shall ha
the right, upon its own election, expressed in writing,
declare this indenture terminated and of no further effe
or obligation, which termination shall take effect one ye
from the date on which notice thereof is served on t
delinquent party.

Peformance of agreements pending arbitration.

SECTION 4. No difference which may arise as to the co
struction or performance of any of the covenants, promi
and agreements herein contained, shall effect, while
remains undetermined, the use of the railroad tracks
the manner in which the parties shall have theretofo
enjoyed their use; but such use shall continue, and sett
ments and payments shall be made as before the existe
of such disagreement; and when it is finally determin
by reference or otherwise, payments and settlements sh
be made by the respective parties as may be required
the award of the referees, or as provided in the agreeme
or adjustment, as the case may be.

Agreements binding upon successors.

SECTION 5. The covenants, promises and agreeme
contained in this agreement shall be binding upon
successors of the respective parties.

Date of execution.

IN TESTIMONY WHEREOF, the parties hereto have ea
by the authority of their respective Boards of Direct
hereto subscribed their corporate names, by their resp
ive President and Vice President, and affixed her

their respective corporate seals, attested by their respective Secretaries, this 25th day of April, in the year of our Lord One Thousand Nine Hundred.

Union Pacific Railroad Company,
By Horace G. Burt,
President.

[SEAL]
Union Pacific Railroad Company, Utah.
1897.

Attest: Alex Millar,
Secretary.

The Missouri Pacific Railway Company,
By C. G. Warner,
Vice President.

[SEAL]
The Missouri Pacific Railway Company.
1880.

Attest: F. W. Irland,
2nd Asst. Secretary.

Union Pacific Railroad Company.
Agreement, Audit No. 1575.
With Missouri Pacific Ry. Co.
Date April 25, 1900.

Approved as to form and execution,
W. R. Kelly, J. N. B.,
General Solicitor.
Date Approved Dec. 11, 1901.

Q. Have you the contract by which the Illinois Central uses the tracks of the Union Pacific Railroad Company in Omaha?

A. I have the contract for trackage in the lower yard, if that is what you mean.

Q. Have you two contracts of the Illinois Central, one covering the use of the Union Depot and the other the trackage?

A. Yes, sir.

Q. Will you produce the contract with respect to the trackage?

Witness hands the contract to counsel.

JUDGE MCHUGH: We now offer in evidence the articles of agreement between the Union Pacific Railroad

Company and the Illinois Central Railroad Compan
dated the 26th day of January, 1900.

MR. BALDWIN: Defendants object to this as inco
petent, irrelevant and immaterial, it being admitted th
the contract is the contract that it purports to be.

The contract referred to was read in evidence, and
as follows:

(Cover page.)
Original.
Agreement No. 967.
Agreement,
Dated January 26, 1900.
Union Pacific Railroad Company
with
Illinois Central Railroad Company
For Trackage to
Union Pacific General Passenger Station,
Omaha.

Date—Parties.

ARTICLES OF AGREEMENT, Made and entered into,
duplicate, this 26th day of January, A. D. 1900, by a
between UNION PACIFIC RAILROAD COMPANY, a corporati
created and existing under and by virtue of the laws
the State of Utah, (hereinafter called the Pacific Co
pany), party of the first part, and ILLINOIS CENTRAL RA
ROAD COMPANY, a corporation created and existing und
and by virtue of the laws of the state of Illinois, (here
after called the Illinois Company), party of the seco
part, WITNESSETH:

ARTICLE 1.

Term—Connection with and use of tracks—Descripti
of tracks.

SECTION 1. In consideration of the rents, charg
and agreements herein set forth, to be by said Illin
Company well and truly paid, kept, and performed,
said Pacific Company hereby lets and grants to s
Illinois Company, for the term ending June 30, 1949,
right to connect the railroad tracks in Omaha now oc
pied by it, at the place hereinafter designated, with
tracks of the Pacific Company, and to run, manage a

operate the passsenger trains and passenger equipment of said Illinois Company to and from the General Passenger Station of the Pacific Company over, along, and upon that part and so much of the tracks of the Pacific Company lying within the City of Omaha, Nebraska, described as follows: Commencing at the junction of the railroad track or tracks of the Pacific Company with the track or tracks of the Omaha Bridge & Terminal Railway Company, now occupied by the said Illinois Company at a point about one hundred and sixty (160) feet north of the east and west one-quarter (¼) section line and eleven hundred (1100) feet east of the west section line, of Section fourteen (14), Township fifteen (15) north, Range thirteen (13) east, of the Sixth (6th) principal meridian, at the point "A," on the map of the premises embraced in this agreement, hereto attached, marked Exhibit "A," and made a part hereof; running thence southerly along and upon said track or tracks of the Pacific Company, as indicated upon said map by the yellow lines to a point marked "B;" thence via the connection at the point marked "C" to a connection with the tracks of the General Passenger Station at the point marked "D," at or near the west side of Twelfth street: for which occupation and use the Illinois Company covenants, promises and agrees to pay to the Pacific Company, monthly, during said term, upon bills rendered therefor by the Pacific Company, the following sums:

Revenue trains.

(1) For each loaded or revenue passenger train en route to or departing from the said General Passenger Station of the Pacific Company, at the rate of one dollar ($1.00) per train mile;

Empty or non-revenue trains.

(2) For each empty or non-revenue passenger train returning from said General Passenger Station to the tracks of the Illinois Company after discharging passengers at said station, and for each empty or non-revenue train going from the tracks of the Illinois Company to said General Passenger Station to take on passengers, twenty-five (25) cents per train mile;

Light engines.

(3) A light engine of the Illinois Company going to said General Passenger Station for a passenger train or returning from said station from a passenger train, shall be deemed a non-revenue passenger train and charged for at the rate provided for such trains.

Description of tracks (Exhibit "A.")

(4) The route of said trains shall be over the track or tracks as shown in yellow lines upon the map thereof hereto annexed, marked "Exhibit A," and for the purposes of this agreement the junction point of the Pacific Company's track or tracks with the track or tracks of the Illinois Company is indicated by the mark "A;" the most southerly point of the Pacific Company's tracks which may be used by the Illinois Company hereunder is indicated by the mark "B;" and the junction point of the Pacific Company's tracks with the General Passenger Station ground tracks is marked by the letter "D." The distances between said points, and which shall be used in computing the trackage charge herein specified to be paid by the Illinois Company, are as follows:

Mileage.

| | |
|---|---|
| From the point "A" to point "B" | 2.26 miles. |
| From the point "B" to the point "D" | 0.51 " |
| In all between "A" and "D" via "B" | 2.77 " |

Trackage rates subject to revision every ten years.

The above mentioned rates for the said trackage privileges shall be subject to change or revision at the end of each ten-year period of this contract at the instance and request of either of the parties hereto, and any differences between the parties in respect thereto shall be subject to arbitration, as hereinafter provided.

Division of expenses for watchmen, flagmen, signalmen, etc.

SECTION 2. The Illinois Company will also pay, monthly, during the entire period of this agreement, a proportion of the cost of such watchmen, flagmen, switchtenders, and signalmen, and also of the cost of such signals, gates, lights, and of such other devices as may be necessary for the proper protection and operation of the

tracks described in "Exhibit A," hereto annexed, or that may be required by state or municipal authority, whether as to streets and alleys, public highways, or as to the crossing of railroads now, or that may be hereafter, constructed over said tracks of the Pacific Company; and the proportion of such cost in any month, to be borne by the Illinois Company, shall be to the aggregate amount of such cost in that month as the number of cars operated during the same month by the Illinois Company over said tracks shall be to the whole number of cars operated thereover during the same period. In computing the charges, as in this Section required, an engine and tender shall be computed as two cars.

Date effective.

SECTION 3. The rental and charges hereinbefore provided for shall commence to accrue on the 29th day of January, A. D. 1900.

Tracks may be substituted on 90 days notice.

SECTION 4. Said Pacific Company may, at its own cost and for its own convenience, on giving ninety (90) days' written notice to the Illinois Company of its intention so to do, furnish other track or tracks in lieu of the track or tracks herein described, for the accomodation of the Illinois Company's passenger trains as herein provided, and upon such substitute track or tracks the rights, privileges, duties, and liabilities, of the respective parties hereto, shall be precisely the same as in respect of the tracks heretofore specifically shown and described, it being understood that such substituted track or tracks, as far as reasonably practicable to provide the same, shall be as conveniently located and situated for the operation and transaction of the business of the said Illinois Company as the track or tracks herein described, and that the charge made or to be made by the Pacific Company in respect of such substitute track or tracks shall be the same as the charge made for the use of the track or tracks and for the trackage privileges hereinbefore specifically described. On the expiration of such written notice, as herein provided, the Illinois Company agrees to cease the use of the track or tracks herein specifically described, and thereafter to use the track or tracks substituted in lieu thereof.

Use of general passenger station, Omaha.

SECTION 5. The Pacific Company will assure to the Illinois Company the right to use the General Passenger Station of the Pacific Company at Omaha, Nebraska, upon terms in every respect as favorable as those which shall be accorded to any other company which has or may acquire the right of such use.

Trackage privileges defined.

SECTION 6. The Illinois Company may use the trackage privileges hereby granted to it solely in the prosecution and transaction of its own business to and from the General Passenger Station of the Pacific Company, and it shall not assign the rights hereby granted to it, or any part thereof, or any interest therein, to any other company or person, nor will it sublet any of the privileges hereby granted to it, or any part or parcel thereof, to any other person or company, nor will it grant or allow, directly or indirectly, the advantage or use of the trackage privileges hereby conferred upon it to any other company or person; and any attempted sale, assignment, or underletting or transfer of said right, title, or interest of the Illinois Company herein, or any part thereof, shall, at the option of the Pacific Company, render this agreement void, and the Pacific Company thereupon may exclude the Illinois Company and all persons or corporations claiming through said Company from the occupation, use and enjoyment of the rights and facilities granted by this contract; provided, however, that the provisions of this Section shall not be construed to prevent the Illinois Company from hauling in its own trains the passenger cars of other companies with which it shall have arrangements for through passenger service and divisions of revenue based thereon, and when said cars shall be taken into its trains at a point not less than twenty-five (25) miles distant from the City of Omaha.

ARTICLE II.

Use of tracks by other railroads.

The Pacific Company may admit any other company operating a railroad, to the joint possession and use of

tracks and premises embraced in this agreement, upon such terms and conditions as it may deem fit and proper; provided, however, that such additional burden placed upon said tracks and premises shall not deprive the Illinois Company of its reasonable and proper use thereof for the purposes for which such use is hereby granted.

## Article III.

Maintenance of tracks, movement of trains, etc.

Section 1. The Pacific Company shall have the care and custody of all the premises aforesaid; shall maintain the same, and make all betterments, improvements, repairs, renewals and replacements thereof; and shall, through its train dispatchers, order and direct the movement of all locomotives, cars and trains, on any part thereof, under such rules, regulations and time schedules, as may be from time to time adopted by the duly authorized officers of the Pacific Company, and said trains shall, in respect of such movement, be treated as the Pacific Company's trains of similar class, and shall have equal preference over trains of inferior class belonging to any party occupying said premises.

Accidents and casualties; liability for, etc.

Section 2. Each Company shall be solely responsible for accidents and casualties occurring upon or to its engines, cars, and trains, arising out of any defects or failures of the track, structures, appurtenances, and appliances, or from misplacement of switches, mistakes in setting signals, errors of train dispatchers, telegraph operators, flagmen, switchmen, watchmen, or from any other cause whatever, except such as may be occasioned by the engines, cars, or trains of both Companies colliding through the fault of the trainmen, and in all such cases of collision, the company whose trainmen are at fault shall pay all damages accruing to the other company, to persons and to property; and, in case such collision or accident is caused by the fault of the employes of both parties, or by one or more of the joint employes of said parties, then each party shall bear, settle, and pay all the loss and damage or injury caused thereby to its own property, or to the prop-

erty under its control, or to its employes or to its passengers; and for the purpose of this agreement the Pacific Company's train dispatchers, telegraph operators, flagmen, watchmen, switch-tenders, and signalmen, or other employes whose duties are directly connected with the movement of trains of both parties over such line of railway, shall be considered the joint employes of both parties hereto. If, however, the Illinois Company shall notify the Pacific Company in writing that any joint employe is negligent or incompetent, then the Pacific Company shall be liable to the Illinois Company for all damages thereafter resulting to its property and employes, and to the property under its charge, and to its passengers, caused by the negligence or incompetence of such joint employe after notice given.

Liability under acts or omissions of employes.

It is mutually understood and agreed that the Pacific Company shall not be liable for any loss or damage occurring on said line of railway caused by the acts or omissions of the sole employes of the Illinois Company, or by the acts or omissions of the sole employes of any railway company other than the Illinois Company; nor shall the Pacific Company be liable for any loss or damage to the trains of the Illinois Company caused by a collision with trains of any other company which the Pacific Company may let into the joint use of said tracks, unless such collision shall be caused by the negligence of the trainmen of the Pacific Company.

Injuries to persons or property.

The Illinois Company hereby covenants and agrees to and with the Pacific Company that it will pay all damages for which a legal liability may arise against either party to this contract for or on account of injuries to persons or property which may accrue on or be occasioned by the engines, cars or trains of said Illinois Company on the line of the Pacific Company, except in cases of collision through the negligence of trainmen of the Pacific Company.

Arbitration.

If the parties hereto cannot agree as to their liability in the case of collision or other casualty aforesaid, then

the matter shall be submitted to arbitrators chosen as hereinafter provided, and the decision of such arbitrators shall be final and binding on the parties hereto.

SECTION 3. Any matter of difference which may arise between the parties to this contract, as to its construction, or as to any violation of its provisions, or refusal to perform any duties that it may be alleged that it imposes, or as to any sum claimed to be due under its provisions from one party to the other, or any matters herein expressly declared to be proper subjects for reference, which cannot be amicably adjusted, may, on the demand of either, be submitted to three disinterested persons experienced in railway operation, as arbitrators. The party demanding such reference shall give to the other party notice of such demand, stating specifically the question to be submitted for decision, and naming a person, who has the required qualifications, to act as one referee. If, at the expiration of ten days from the receipt of said notice, the party receiving it has not notified the party demanding the reference, of its nomination of its second referee having like qualifications, the party making the demand may make such selection. The first and second referees shall select the third. When the board is completed the referees shall fix a day and place for the hearing, of which the parties shall severally be notified. If the two referees chosen shall be unable to agree upon the third referee, such third referee may be appointed upon ten days' notice, on motion of either party by a Judge of the Circuit or District Court of the United States for the District of Nebraska. After hearing the testimony and arguments which may be submitted by either party, the referees, if they unanimously agree upon the award, shall state it in writing, which, when delivered to both parties, shall be binding and conclusive upon each, and each party hereby agrees to be conclusively bound thereby. If they cannot unanimously agree they shall, by like agreement, select two additional referees having like qualifications; if the two additional referees cannot be unanimously agreed upon, they may be appointed by a Judge of the Circuit or District Court of the United States for the District of Nebraska, and to the board thus constituted shall be submitted a statement of

the facts as to which there is a unanimous agreement between the first three referees selected as above, and all the testimony pertaining to the matters in dispute, as to which said referees cannot agree. The award of the majority of the five referees shall be in writing, and, when delivered to the parties, shall be as final and conclusive as the award of the first chosen referees would have been. If either party refuses to keep and perform such award, the adverse party may enforce the same by appropriate proceedings in any court of law or equity, and shall have the right, upon its own election, expressed in writing, to declare this indenture terminated and of no further effect or obligation, which termination shall take effect one year from the date on which notice thereof is served on the delinquent party.

Performance of agreements pending arbitration.

SECTION 4. No difference which may arise as to the construction or performance of any of the covenants, promises, and agreements herein contained, shall effect, while it remains undetermined, the use of the railroad tracks in the manner in which the parties shall have theretofore enjoyed their use; but such use shall continue, and settlements and payments shall be made as before the existence of such disagreement; and when it is finally determined, by reference or otherwise, payments and settlements shall be made by the respective parties as may be required by the award of the referees, or as provided in the agreement or adjustment, as the case may be.

Agreements binding upon successors.

SECTION 5. The covenants, promises, and agreements contained in this agreement shall be binding upon the successors of the respective parties.

Date of execution.

IN TESTIMONY WHEREOF, the parties hereto have each, by the authority of their respective Boards of Directors, hereto subscribed their corporate names, by their respective Presidents, and affixed hereto their respective corporate seals, attested by their respective Secretaries, this 26th

day of January, in the year of our Lord One Thousand Nine Hundred.

Union Pacific Railroad Company,
By Horace G. Burt,
President.

[SEAL]
Union Pacific Railroad Company.
Utah.
Attest: Alex Millar,
Secretary.

Illinois Central Railroad Company,
By Stuyvesant Fish,
President.

[SEAL]
Illinois Central R. Rd. Co.
Attest: A. G. Hackstoff,
Secretary.
Approved as to form: W. R. Kelly,
General Solicitor.

Q. Have you the contract by which the Wabash Company uses any portion of the property of the Union Pacific Railroad Company?

A. I have no contract with the Wabash Railroad.

Q. They use it under a tentative agreement that has not been merged into a contract?

A. I have a contract with the Omaha & St. Louis Company.

Q. The Wabash Company uses the bridge and tracks of the Union Pacific Railroad Company under a contract between the Union Pacific Railroad Company and the Omaha & St. Louis Railroad Company, does it?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial. I don't know whether Mr. Bettis knows that.

JUDGE MCHUGH: Well he would know whether they make their charges under that contract or not.

A. I don't know. That is all I have.

Q. Who figures up the compensation to be paid to the Union Pacific Railroad Company by the Wabash Company for its use of the properties of the Union Pacific?

A. They are made by the Auditor of Disbursements, if there are any bills made.

Q. Who is that?

A. Mr. Richmond Anderson.

Q. Is he under you?

A. No, he is on a level with me.

Q. That department is not subject to your department?

A. It is subject to the General Auditor?

Q. Do you pass upon the work or the correctness of it?

A. If it is necessary to come to the General Auditor, in his absence I do.

Q. I will ask you to state whether or not the compensation which the Wabash Railroad pays to the Union Pacific Railroad Company for the use of its bridge and tracks is determined by the contract dated the 16th day of December, 1898, between the Union Pacific Railroad Company and the Omaha & St. Louis Railroad Company?

A. No, sir.

Q. I will ask you whether the contract which I have mentioned, between the Union Pacific Railroad Company and the Omaha & St. Louis Company is operative today?

A. There is a supplemental agreement between them.

Q. This contract is operative and there is a supplemental agreement that refers to this and is a part of the agreement under which the Wabash uses the tracks?

A. Yes, sir.

Q. And the supplemental agreement affects the compensation?

A. Yes, sir.

Q. Is that supplemental agreement in writing?

A. Yes, sir.

Q. Have you that with you?

A. Well, it is a memorandum. Two trains having been discontinued the compensation has been reduced.

Q. Then the contract under which the Wabash Railroad uses the Union Pacific tracks and bridge, is embodied in the contract I have mentioned with the Omaha & St. Louis Railroad Company, in connection with this memorandum or supplemental agreement, dated January 5, 1899?

A. Well I don't know whether you could call it that date.

That is the letter from Mr. Dickinson, isn't it?

Q. Yes.

A. Well say as set forth in a letter from Mr. Dickinson to somebody on that date.

JUDGE MCHUGH: We now offer in evidence the agreement between the Union Pacific Railroad Company and the Omaha & St. Louis Railroad Company, dated September 16, 1898, it being agreed that said contract is the contract it purports to be, and also in connection with said offer I offer in evidence the letter from E. Dickinson to Mr. Robert Gillham, General Manager K. C. P. & G. Railroad, Kansas City, Missouri, dated January 5, 1899, together with a memorandum thereon signed by Robert Gillham, it being agreed that the said letter is the memorandum referred to by the witness, and the genuineness of the letter and of the signatures to the letter and memorandum thereon being admitted.

MR. BALDWIN: We object to this as incompetent, irrelevant, and immaterial.

Contract and letter referred to are read in evidence and are as follows:

E. Y.
Sep. 19, 1898.
Auditor of
Disbursements.
Sep. 26, 1898
U. P. R. R. Co.

AGREEMENT No. 255.

AGREEMENT PROVIDING FOR THE TEMPORARY USE AND OCCUPATION OF CERTAIN TRACKS OF UNION PACIFIC RAILROAD COMPANY.

THIS AGREEMENT, made and entered into this 16th day of September, A. D. 1898, by and between Union Pacific Railroad Company, a corporation of the State of Utah, as party of the first part, hereinafter called the Pacific Company, and the Omaha & St. Louis Railroad Company, a corporation of the State of Missouri, party of the second part, hereinafter called the St. Louis Company, Witnesseth;

I.

That in consideration of the payments, covenants and agreements hereinafter contained, to be paid, kept and

performed by said St. Louis Company, the Pacific Company hereby grants to it, and the said St. Louis Company accepts, the right to run and operate over the bridge of the Pacific Company across the Missouri River and the tracks of the said Pacific Company between Council Bluffs, Iowa, and Omaha, Nebraska, that and those certain train or trains of said St. Louis Company number 1 and 2, and known as its Kansas City and Omaha Express, each to consist of five coaches, with the necessary locomotives, baggage and other cars appurtentant thereto; also that and those certain train or trains of the said St. Louis Company known as numbers 14 and 15, and known as its St. Louis Express and Omaha Mail, each to consist of 2 or more coaches with the necessary locomotives, baggage and other cars appurtenant thereto. The line of railway, bridge and tracks over which the right to operate said train or trains is hereby granted, is more specifically described on a plat thereof hereto attached and made a part of this agreement.

II.

The Pacific Company further agrees that the St. Louis Company may run its empty trains over the tracks of the Pacific Company between the passenger depot of the Union Pacific Company at Omaha, Nebraska, and the cleaning yards of the St. Louis Company at Council Bluffs, Iowa.

III.

The trains of the St. Louis Company while upon the premises of the Pacific Company under this contract shall be operated by the employes of said St. Louis Company, subject, however, in all things to the directions, guidance, orders and control of the proper officers of the Pacific Company, and subject in all respects to the rules and regulations governing trains and employes of like class of the Pacific Company.

The Pacific Company will make, publish and enforce the necessary time tables and running arrangements for the trains of the St. Louis Company whilst upon the premises of the Pacific Company; and the St. Louis Company guarantees and agrees to and with said Pacific Company that the officers and employes of said St. Louis

Company, whilst upon the premises of the Pacific Company, under this contract, shall obey and strictly conform to all reasonable rules, regulations, orders and directions of the officers of the Pacific Company.

IV.

The St. Louis Company hereby contracts and agrees to and with the Pacific Company to pay, at the office of the Local Treasurer of said Pacific Company, in Omaha, during the continuance of this contract, the full sum of One Thousand Dollars per month, payable on or before the twentieth day of each succeeding month, for the use of said bridge, railway and tracks, and for the privilege of operating its said trains over, along and across the same as hereinbefore provided; and in the event of a failure on the part of said St. Louis Company to make the payments herein stipulated, at the time and place herein provided, then the Pacific Company may, without further notice to said St. Louis Company, cancel this agreement, and withdraw, cancel and set aside all the rights and privileges granted thereunder, and the said St. Louis Company shall have no claim at law or in equity against said Pacific Company for breach of contract, or condition broken.

V.

It is mutually agreed that whilst upon the premises of the Pacific Company, under this contract, the employes, trains, cars and locomotives of the St. Louis Company, shall be and remain the employes, trains, cars and locomotives of said St. Louis Company, which shall in all respects be responsible and liable to said Pacific Company, its employes and the general public for any act of omission, commission, negligence, damage or wrongful act caused, done or permitted to be done by said St. Louis Company, its trains, engines, cars, locomotives, officers or employes whilst upon the premises of the Pacific Company under this contract, and said St. Louis Company hereby expressly agrees to save and hold harmless said Pacific Company from all damages, costs, expenses or losses of any and every name and nature which said Pacific Company may sustain, or to which it may be subjected, by

judicial decision or otherwise, arising from or growing out of the operation and running of the trains of said St. Louis Company upon the tracks and premises of the Pacific Company under this contract; and said St. Louis Company further contracts and agrees to defend, at its own cost and expense, any and all suits which may be commenced against the Pacific Company arising from or growing out of the tortious act of any officer, agent or employe of the St. Louis Company, whilst upon the premises of the Pacific Company under this contract.

VI.

This contract shall take effect upon the fourth day of September, 1898, and shall continue in force from month to month until terminated by thirty days written notice served by either party upon the other, and a service upon the General Manager of either of said parties shall be construed as due and lawful service under this clause. Upon the taking effect of this agreement another agreement between the parties hereto, bearing date June 8, 1898, is to be construed as of no further force or effect.

All matters arising under, or payments accruing under said former agreement to be settled by the terms and conditions thereof, and the use of the tracks of the Pacific Company for said trains number 1 and 2 in said agreement specified for the first three days of September, to be settled for on the basis provided in said former contract.

In Witness Whereof, said parties have caused this temporary agreement to be signed by their respective General Managers, duly executed and delivered the day and year first above written.

Union Pacific Railroad Company,
By E. Dickinson,
General Manager.

Witness: J. S. Sykes.

Omaha & St. Louis Railroad Company,
By Robert Gillham,
General Manager.

Witness: B. G. Fryer.

Union Pacific R. R. Co.
Approved as to Form and Execution.
W. R. Kelly, Gen. Sol.
(Endorsed on Back.)
Agreement No. 255.
Copy Sent to Secretary
Sept. 26, 1898.
Brief Made
10-24-98.
P. Anderson, M. Aud. Dis.

AGREEMENT No. 342.

This takes the place of Contract No. 255 with Omaha & St. L. Ry.

E. Y.
Jan. 11, 1899.

R. A.
Jan. 12, 1899.
Auditor's Office,
Jan. 10, 1899.
U. P. R. R. Co.

UNION PACIFIC RAILROAD COMPANY.

E. Dickinson,
General Manager.

Omaha, January 5th, 1899.

Mr. Robert Gillham,
General Manager, K. C. P. & G. Railroad, Kansas City, Missouri.

Impression copy taken and original returned.
1-12, 1899.

Dear Sir:

Referring to telegraphic correspondence which passed between us yesterday as follows:

"Kansas City Mo., January 4th, 1899.—To E. Dickinson: We are considering question of taking off trains No. 1 and 2. If we conclude to do so, what concession will you make in charge under contract with your company, dated September sixteenth last. (Signed) Robert Gillham."

"Omaha, Neb., January 4th, 1899. To Robert Gillham: Answering your telegram: In consideration of the discontinuance of trains one and two, we would cut the

bridge charge in two, making it five hundred dollars per month. Your Omaha Union Depot expenses, of course, would be on the basis of wheelage. (Signed) E. Dickinson."

"Kansas City, Mo., January 4th, 1899. To E. Dickinson: We will discontinue one and two commencing with next Sunday. Thank you for your message reducing rental to old basis. (Signed) Robert Gillham."

In view of above our bills against your company for use of bridge and tracks as per agreement dated Sept. 16th, 1898, will be made at the rate of $500.00 per month, commencing with next Sunday, January 8th, 1899.

Forward this letter to you in triplicate and would ask that you certify below as to the correctness of above dates, etc., and return two copies to be attached to our copies of contract above referred to.

Yours truly,
E. Dickinson.

Dates, &c., correct,
Robt. Gillham.
K. C. 1-9-99.
Approved. W. R. Kelly,
Gen. Sol.

(Endorsed on back.)
Agreement No. 342.
Copy sent to Secretary,
Jany. 23, 1899.
Auditor of Disbursements.
Jan. 24, 1899.
U. P. R. R. Co.
Brief Made,
1-30-99.
R. Anderson, M. Aud. Disb.

Q. Now, have you the contracts, Mr. Bettis, under which the various railroad companies use the Union Depot, what is called the Union Depot, of the Union Pacific Railroad Company at Omaha?

A. I have.

Q. Will you state, Mr. Bettis, what companies have signed the original and supplemental agreement with respect to the use of the Union depot at Omaha, and when the companies signed the contracts respectively?

A. The contract does not show when they are signed.

Q. State what companies signed?

A. The Chicago & Northwestern, Chicago, Rock Island & Pacific, Chicago, Milwaukee & St. Paul, Missouri Pacific, and Illinois Central.

Q. Isn't there a contract with the Wabash?

A. It is not signed by the Wabash, nor the Omaha & St. Louis.

At this time the further taking of testimony was adjourned until two o'clock p. m.

At two o'clock p. m. the taking of testimony was resumed, Mr. Bettis resuming the witness stand, and the direct examination being continued by Judge McHugh, as follows:

Q. Mr. Bettis, the Union Pacific Railway Company received bonds from the United States in aid of its construction, did it not?

A. I have read so.

Q. Have you any records in your office showing the facts in that regard?

A. No sir, not so far as I could find. I have searched and I couldn't find any.

Q. Search has been made?

A. Yes, sir.

Q. And your records have not disclosed any?

A. No, sir.

Q. Would you know in what office such records would be kept?

A. No, sir.

Q. What form would such a record take, Mr. Bettis?

A. I don't know as I understand the question.

Q. What I mean to say is how would such a fact appear upon the books and records of the company?

MR. BALDWIN: We object to that as incompetent, irrelevant, and immaterial.

Q. Do you know Mr. Bettis during what years the Union Pacific Company charged tolls on its bridge across the Missouri River, to Omaha?

A. No, sir.

Cross-examination waived.

Witness excused.

Mr. John B. Berry, being called and sworn as a witness on the part of complainants, testified as follows:

DIRECT EXAMINATION.

By Mr. Frank B. Kellogg:

Q. Mr. Berry, state your name and your position with the Union Pacific?

A. John B. Berry, chief engineer.

Q. How long have you been chief engineer of the Union Pacific Railroad Company?

A. Five years ago the first of last February.

Q. Previous to that time were you in the employ of the Union Pacific, or of the receivers, as an engineer of Union Pacific Railroad Company?

A. No, sir.

Q. Your service commenced with the Union Pacific at that time?

A. Yes, sir.

Q. Previous to that time you were with another company?

A. Yes, sir.

Q. What company?

A. The Fremont, Elkhorn & Missouri Valley.

Q. With headquarters at Omaha?

A. Yes, sir.

Q. For how many years were you with that company?

A. Five.

Q. As chief engineer?

A. Yes, sir.

Q. Have you a map showing the Union Pacific tracks from Council Bluffs to the Rock Island connection south of South Omaha?

A. As they exist now?

Q. As they exist now.

A. Yes, sir.

Q. Will you please show it to us, Mr. Berry?

A. (Producing a map.) This is it, and it is in two sections.

Q. In two sections did you say?

A. Yes, sir.

The two sections of the map referred to are marked plaintiffs exhibits 4–a and 4–b.

Q. The maps, plaintiffs exhibits 4–a and 4–b, cor-

rectly show the property owned by the Union Pacific Railroad Company, colored red?

MR. BALDWIN: Defendants object to that as incompetent, irrelevant and immaterial.

A. Yes, sir.

JUDGE MCHUGH: The objection as to its competency does not refer to the fact that we ask him what property the Union Pacific owns instead of proving it by the record title.

MR. BALDWIN: I do not object to his stating it, I simply want to object on the ground that you have no right to inquire as to certain sections of this territory.

JUDGE MCHUGH: But you don't object to our proving the property that is owned by the company, by Mr. Berry?

MR. BALDWIN: I do not object to his stating, if he knows, what is owned by the company.

Q. Do these maps also correctly show the location, the present location of the tracks and sidetracks and depot tracks of the Union Pacific Railroad Company, from the west end of the bridge to the Rock Island connection at South Omaha?

A. The west end of the Missouri River Bridge, you mean?

Q. West end of the Missouri River Bridge.

MR. BALDWIN: We object to this as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. Does this map show the particular property contained within the Union Depot contracts, as distinguished from the other property of the Union Pacific.

MR. BALDWIN: This is objected to as incompetent, irrelevant and immaterial.

Q. I mean this contained in these contracts known as the Union Depot contracts, or the Union Pacific depot contracts with the other companies?

A. For our passenger facilities?

Q. Yes, for the passenger facilities.

A. Yes, sir.

Q. What property, as shown on this map, is that property covered by the Union Depot contracts for passenger facilities?

A. Included within the yellow dotted lines.

Q. Is this yellow line—is the property contained

within the yellow dotted line the property covered by the supplemental depot contract?

MR. BALDWIN: Objected to as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. This property within the yellow line is the property which is covered by the contract, by the two depot contracts, and used for passenger facilities?

A. Yes, sir.

Q. What line of road parallels the Union Pacific railroad from a place opposite the Union Pacific depot to South Omaha?

A. We usually call it the B. & M. in Nebraska, the Chicago, Burlington & Quincy.

MR. BALDWIN: How far did you say it paralleled the Union Pacific?

MR. KELLOGG: From a place opposite the Union Pacific depot in Omaha, to the crossing—

MR. BALDWIN: Well, you said it paralleled it to South Omaha.

MR. KELLOGG: Well, I will correct that.

Q. To the crossing near South Omaha?

A. East of South Omaha.

Q. The Burlington line, is it?

A. Yes, sir.

Q. Does the Burlington track run on a level with the Union Pacific Railroad, or on a higher level from the depot to the Burlington crossing at South Omaha?

A. A higher level.

Q. How much higher?

A. When they get to the crossing they are about twenty-two feet higher.

Q. The most of the way they are not that much higher?

A. No, sir.

Q. Where does it commence to rise above the Union Pacific track?

A. About 12th Street.

Q. And from there all the way to the crossing it is higher than the Union Pacific?

A. Yes, sir.

Q. The Burlington tracks east of South Omaha across the Union Pacific tracks are overhead?

A. Overhead.

Q. Does this map show the connection between the Fremont, Elkhorn & Missouri Valley tracks and the Union Pacific tracks over a track owned by the Chicago & Northwestern Railway Company?

A. Yes, sir.

Q. Is the track which is marked "C. & N.-W. Ry. track," the track you refer to?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. That track connects with the Union Pacific tracks near the Burlington crossing?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. And connects with the tracks of the Fremont, Elkhorn & Missouri Valley Railway how far away?

MR. BALDWIN: Objects as incompetent, irrelevant and immaterial.

A. Mr. Kellogg, that question is not definite. You were speaking of the C. & N. W. tracks; are you leaving that subject?

Q. How far is it from the Northwestern tracks over to the Fremont, Elkhorn & Missouri Valley tracks?

A. I can't state exactly, but I should say a mile and a quarter.

Q. What is the scale of this map?

A. One hundred feet to the inch.

Q. Do the tracks of the Fremont, Elkhorn & Missouri Valley Railroad connect with the Union Pacific tracks at South Omaha?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. No, not at South Omaha.

Q. Do they connect—they connect over the tracks of of the Northwestern?

A. No, sir.

Q. They connect with the Northwestern, do they not?

A. No. They connect with the Northwestern, but the Union Pacific tracks connect with the Fremont, Elkhorn & Missouri Valley by running around this "Y" (indicating) and up through the yards.

Q. This line up here? (Indicating).

A. Yes.

Q. Known as the Omaha Belt Railway?

A. Yes you can call it that.

Q. That is the Union Pacific tracks connect with the Fremont, Elkhorn & Missouri Valley tracks by running around the "Y" shown on this map?

MR. BALDWIN: Objects as incompetent, irrelevant, and immaterial.

A. Yes.

Q. Now will you designate that "Y?"

A. Assuming that these crossing frogs are replaced at times when taken up. It is not a usual crossing and not a usual delivery point.

Q. What would be the delivery point between the Fremont, Elkhorn & Missouri Valley, and the Union Pacific now?

MR. BALDWIN: Objects as incompetent, irrelevant, and immaterial.

A. At either Fremont or .....

Q. I mean at South Omaha?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

Q. Would it not be from the Chicago & Northwestern tracks?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. No sir.

Q. Well that does connect with the two lines does it not?

A. Yes, away west, about a mile and a quarter to a mile and a half west.

Q. That is this C. & N. W. Ry. track shown on the map, at South Omaha, connects with the Fremont, Elkhorn & Missouri Valley about a mile and a half from the Union Pacific tracks?

A. Yes, sir.

Q. That is the only track that the Chicago & Northwestern have at South Omaha, that you know of, isn't it?

A. Yes, sir.

Q. Just that connecting track between those two lines?

A. Yes, sir.

Q. That is between the Fremont, Elkhorn & Missouri Valley and the Union Pacific?

A. Yes, sir.

Q. Now when was that track constructed?

A. It was finished about a year ago.

Q. About a year ago?

A. Yes, sir.

Q. Previous to that time what was the connection between the Fremont, Elkhorn & Missouri Valley line and the Union Pacific line at South Omaha?

A. Through the stock yards system up to the Elkhorn yard.

Q. The Elkhorn line, so called, connected with the Stock Yards company line?

A. Yes, sir.

Q. And you connected with the Stock Yards company lines?

A. Yes, sir.

Q. Does this map show the connection of the Union Pacific, at South Omaha with the Rock Island Company's lines?

A. No, sir. No, sir. It is a little west of this map.

Q. About how far is it south of your South Omaha siation?

A. Oh, six or eight hundred or a thousand feet—that is west of the South Omaha station. (Witness places a rule on the map, and says further) about fifteen hundred feet.

Q. The Missouri Pacific Railway line connects with your line further south than the Rock Island?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. At what place?

A. Gilmore Junction.

Q. Now, does the Omaha Belt Line Railway Company's line also connect with you at South Omaha?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

Q. I say "connect with you," I mean connects with the Union Pacific Railroad's tracks.

A. Well, do you call all this South Omaha? (Indicating on the map.)

Q. Yes, I call all this South Omaha.

A. Yes, sir.

Q. Where does it connect?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. Right here. (Indicating.)

Q. Say at a point shown on this map nearly opposite "D" street projected?

A. Yes, sir.

Q. The Belt Line, generally speaking, then runs where from that point?

A. To Webster street, Omaha.

Q. Around the city or through the city?

A. Around the city.

Q. Are there any other railroad tracks running directly through the city from Omaha to South Omaha except the Burlington and the Union Pacific, shown on this map?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. On their own right of way and tracks?

Q. Yes, that is what I mean, on their own right of way and tracks?

A. No, sir. Let me qualify that. The Elkhorn do have a trackage of their own from Omaha to South Omaha by way of Irvington.

Q. I am speaking of through the main part of the city, not around it.

A. No, sir.

Q. All the lines then that run into the City of Omaha station use your tracks—use the tracks of the Union Pacific Railroad Company. I am speaking now of your depot.

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. No, sir.

Q. Use some part of your tracks?

A. Not all companies, no sir.

Q. All the lines that run their trains into your depot use your tracks?

A. To the passenger station, yes, they use our tracks to the passenger station.

Q. From your connection at South Omaha with the Rock Island that road's line runs generally west, does it?

A. Yes, sir.

Q. And the Missouri Pacific line runs which way from your connection with it?

A. Southerly.

Q. And the Elkhorn, which way?

A. Northwesterly.

Q. These tracks shown on this map, and the station building marked "Burlington Station," are they the Burlington's tracks, meaning the Burlington & Missouri River, or the Chicago, Burlington & Quincy?

A. Yes, sir.

Q. This map also shows certain tracks crossing the Union Pacific tracks near the bank of the Missouri River?

A. Yes, sir.

Q. State whether those tracks cross under or on grade with the Union Pacific?

A. Under.

Q. The Union Pacific tracks there are on a high embankment and a bridge over these tracks, are they not?

A. Yes, sir.

Q. What do these marks on this map near the Missouri River—rows of lines—show generally, the bluff line?

A. The bluff line, yes sir. You might say the bluff line. It shows really the embankment.

Q. The Union Pacific tracks and the depot, between the end of the bridge and 10th Street lie on a high embankment, do they not?

A. Not all the way.

Q. Well a part of the way?

A. Yes, sir.

Q. As far as from the end of the bridge to about 7th Street?

A. Yes, sir.

Q. How many main tracks have you from 20th Street to South Omaha?

MR. BALDWIN: Objects to this as incompetent irrelevant and immaterial.

A. There are two.

Q. What are the other tracks?

MR. BALDWIN: Objects as incompetent.

A. Sidings.

Q. When were these main tracks constructed?

MR. BALDWIN: Objects to this as incompetent.

A. Now that is—we can't give you when those main tracks were constructed. There was no record kept previous to 1884 that is definite.

Q. Well wasn't the double track from Council Bluffs to South Omaha put in about the year 1885?

A. No, it was put in in pieces beginning in 1884 and extending to about 1890.

Q. The double track?

A. Yes, it wasn't all built at the same time.

Q. Well, wasn't the double track extended clear to South Omaha as early as 1886?

A. I can't answer that.

Q. Have you got records in your office that will show?

A. Yes, we could look that up for you and let you know definitely.

Q. Well, now, the double track was placed on the bridge, or the bridge reconstructed, what year? That is the superstructure of the bridge constructed in what year?

A. I can't answer that definitely.

Q. About 1885?

A. Yes, sir, about that time.

Q. Previous to that time it was a single-track bridge, was it?

A. I can't answer that.

Q. Well, do the records of your office show anything of that kind?

A. Yes, sir; we can give you that.

Q. You have some details there?

A. Yes, sir; we have the records that were kept from 1884.

Q. You have no records kept prior to 1884?

A. No, sir.

Q. What form are those records in?

A. They are kept in the office from annual reports made by the division engineers and from orders for the construction of various sidings and buildings.

Q. Have you a copy of that record?

A. No, no copy. This was just being written up for us when they sent for me. (Referring to memorandum in his hand).

JUDGE MCHUGH: Is that a copy of the record?

A. Yes, this is a copy of the record. It may help you a good deal to say right now that if you call Mr.

Schermerhorn he can tell you more of this. He has been with the company a longer time than I have, and he will be able to identify this.

Q. Did you have prepared in your office, Mr. Berry, a map showing the connection, or proposed connection, between the Mason City & Fort Dodge or Chicago & Great Western and the Union Pacific in Council Bluffs?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. About when was that made, do you remember?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. I think about a year ago.

Q. I show you a map, plaintiff's Exhibit 5. Please state what that is, Mr. Berry.

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. A map of Council Bluffs, colored in yellow, as we understood it, all land proposed to be purchased by the Chicago & Great Western Railway, and trackage across the land to reach the Union Pacific track.

Q. The other tracks here shown on this map, are what company's tracks?

A. All companies running into the transfer depot.

Q. The line colored yellow shows the proposed connection for the Chicago & Great Western Railway?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial?

A. Yes, sir.

Q. With what company?

A. With the Union Pacific.

Q. Is the line extending from the red—the line colored red, near Broadway, to the said yellow line showing the proposed connection with the line of the Union Pacific Railroad Company?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. State what companies—what company owns these terminal tracks here shown on this map, colored white?

A. Omaha & St. Louis, Kansas City, St. Joseph & Council Bluffs, Chicago, Burlington & Quincy, Chicago,

Rock Island & Pacific, Chicago & Northwestern, and the Chicago, Milwaukee & St. Paul.

Q. Which are the Union Pacific tracks.

A. It is hard to define that because they are mixed in so with the tracks of the other companies.

Q. Well, is this most northerly track on this map the Union Pacific's track?

A. Yes, sir.

Q. Then the Union Pacific's track extends from Broadway, as shown on this map, the most northerly track clear across the map?

A. Yes, sir.

Q. Should a connection be made, is that a proper and convenient connection?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial, and as calling for an opinion of the witness and not a statement of the facts.

A. Yes, sir.

MR. KELLOGG: Complainants now offer in evidence Exhibit 5, as referred to in the evidence of Mr. Berry.

MR. BALDWIN: Defendants object to the introduction in evidence of exhibit 5, as above referred to, for the reason that the same is incompetent, irrelevant and immaterial.

MR. KELLOGG: Complainants also offer in evidence the two maps marked respectively Exhibit 4–a and Exhibit 4–b.

MR. BALDWIN: Defendants object to the introduction in evidence of Exhibits 4–a and 4–b as above referred to for the reason that the same are incompetent, irrelevant and immaterial.

MR. KELLOGG: Complainants also offer in evidence the maps marked respectively Exhibit 1 and Exhibit 2.

MR. BALDWIN: To all and each of which Exhibits 1 and 2, the defendants object, for the reason that the same are incompetent, irrelevant and immaterial.

Q. These tracks colored white, extending northerly from the Union Pacific tracks—what are those tracks?

A. Sidetracks to various industries.

Q. One of those is between 20th and 19th Streets, is that a Union Pacific track?

A. Yes, sir.

Q. One in an alley between 19th and 18th Street, is that a Union Pacific track?

A. Yes, sir.

Q. And one partially in 18th Street?

A. Yes, sir.

Q. And one in an alley between 18th and 17th Streets, and one in the block between 17th and 16th Streets.

A. Yes, sir.

Q. Are those tracks below or at a level with the Union Pacific main line tracks to South Omaha?

A. Below.

Q. This map does not show the distance below, does it?

A. No, sir.

Q. About how much below?

A. It varies.

Q. Can you tell me what streets have viaducts over the tracks of the Union Pacific Railroad, as shown on this map?

A. Yes, sir.

Q. Name the first one south (west) from the bridge?

A. Tenth Street.

Q. The Tenth Street viaduct extends clear over the Union Pacific and the Burlington tracks, does it not?

A. Yes, sir.

Q. Extends from about what point on Tenth Street to what point south?

A. From Jackson to Mason Streets.

Q. How far above the Union Pacific tracks is that?

A. Twenty feet.

Q. Does this map show where the abutments or piers of the viaduct are situated?

A. Yes, sir.

Q. Which are they?

A. The abutments are shown on full lines, the piers by dotted lines.

Q. The dots show the piers?

A. Except where there are places there where we have just shown the floor of the bridge, the piers being under.

Q. That is nearly opposite the depot and within the white line, you say there are piers under that?

A. Yes, sir.

Q. Now can you give the size of that pier, or the piers under the viaduct there, and opposite the station?

MR. BALDWIN: Objects as immaterial.

A. Masonry from two and a half to four feet square, and the columns not to exceed twelve inches square.

Q. A number of them?

A. Yes, sir.

Q. What next?

A. Eleventh Street. The roadway is over the tracks.

Q. That extends from what street to what street?

A. That goes from Jackson to just south of Mason Street,—or just north of Mason Street.

Q. The abutments and piers are also shown on this the same as on the other?

A. Yes, sir.

Q. Describe the next.

A. Then we have Thirteenth Street that runs under the main tracks of the Union Pacific.

Q. Do you know the height of the tracks above the street there.

A. About fourteen or fifteen feet.

Q. The next viaduct is where?

A. On Sixteenth Street.

Q. That extends from about Leavenworth Street to Pierce Street?

A. Yes, sir.

Q. What next?

A. Then comes Twentieth Street, which runs under the Union Pacific tracks.

Q. How far, about fourteen or fifteen feet under the tracks?

A. Yes, sir.

Q. What next?

A. Twenty-fourth Street, that is over. Then we have a bridge on what is called the Vinton Street boulevard, a bridge that crosses over. Then in South Omaha we have others.

Q. Where in South Omaha?

A. There is a viaduct on "L" Street—one at "L" Street, and one at "Q" Street to the west of this (indicating "L" Street).

Q. One at "L" Street and one at "Q" Street?

A. Yes, sir.

Q. Will you give us a map, Mr. Berry, from the west end of the Missouri River bridge to the east terminus of your line in Council Bluffs, showing the property and tracks of the Union Pacific, and showing the proposed connection as shown on the map, complainants Exhibit 5?

MR. BALDWIN: Objects to this as incompetent, immaterial and irrelevant. "That is there is no objection to "this map, but you and Mr. Berry are talking about a "'proposed connection,' and that part is objected to as "incompetent. I am willing to have a map showing just "the exact locations, but I don't know anything about "any proposition; I am willing to let these maps show the "locations, but you are using the words 'Proposed con-"nection,' and that is what we are objecting to."

MR. KELLOGG: What I want the map to show is the connection. The connection is shown on Exhibit 5.

MR. BALDWIN: I object to permitting the engineer to put in evidence anything under the word "proposed," when that is the gist of the inquiry.

JUDGE MCHUGH: We mean showing the point of connection as shown on Exhibit 5.

Witness excused.

Augustus D. Schermerhorn is here called and sworn as a witness on the part of complainants. Testified as follows:

DIRECT EXAMINATION.

By Mr. Frank B. Kellogg:

Q. Are you an engineer in the employ of the Union Pacific Railroad Company?

A. Yes, sir.

Q. What is your position with that company?

A. Division engineer on the Nebraska division.

Q. How long have you been in the employ of the Union Pacific Railroad Company as an engineer?

A. I have been in the engineering department for twenty-four years, as an engineer about twenty-two years of that time.

Q. You have worked for the Union Pacific Railroad Company and the Union Pacific Railway Company; you are now at work for the present company?

A. Yes, sir.

Q. Your headquarters during that time have been at Omaha?

A. For twenty-two years; yes, sir.

Q. Can you tell me the height of the embankment east of the river between the bridge and what is known as the Union Pacific Transfer Station?

MR. BALDWIN: Objects to this as incompetent, immaterial and irrelevant.

A. It varies from practically nothing at the transfer depot to about fifty feet at the bridge.

Q. As division engineer what are your duties, Mr. Schermerhorn?

A. Having charge of the maintenance and construction work on the Nebraska division, the sidings, new tracks and buildings and bridges.

Q. I show you a map attached to the bill of complaint in this case, attached to the Renewal Mortgage, Omaha Bridge, and marked "Sketch showing initial "point U. P. Ry. Surveys, Station O. of Government "Measurements, and Location of Mile Posts, Res. Engi- "neer's Office April 23, 1886." What does that map show?

MR. BALDWIN: Objected to as incompetent, immaterial and irrelevant.

A. It shows the original construction. The line of the Union Pacific on the west side of the Missouri River, and the line built later crossing there.

Q. And the line built later extended from what point to what point?

A. Council Bluffs to about Twentieth Street, Omaha.

Q. The line from the point marked "Initial point," extending south by Twentieth Street, what line was that?

A. That was the originally constructed line.

Q. Now that was a single track line wasn't it?

A. Yes, sir, a single track line.

Q. And the other when it was constructed was a single track line, was it not?

A. Yes, sir.

Q. Tell me when the double track was built across the bridge?

A. About 1886.

Q. Well, at the time they reconstructed the superstructure of the bridge, was it not?

A. Yes, sir.

Q. Was that 1885 or 1886.

A. I am not positive, I think it was in part of both years.

Q. Well previous to the reconstruction of the superstructure of the bridge and making it a double track bridge, both lines were single track lines were they?

A. I think they were. But I believe we had some double track in there.

Q. Along by the stations?

A. Yes, sir, and through the Omaha yards, from the passenger station west, before the bridge was double tracked.

Q. That is you had your passenger tracks there and yard tracks and other tracks.

A. No, we had a continuous double track through the yards.

Q. Now state when the double track was extended from Council Bluffs clear down to South Omaha?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. Well first the portion from Council Bluffs to the Omaha Station, about the year 1886, from the Omaha Station to—for a distance of about three miles the double track was built prior to 1884, I think in about 1883 and in 1884. It was built from a point three miles from the Omaha station to a short distance below South Omaha,

Q. You think it was in 1884?

A. Yes, sir.

Q. About when were the South Omaha Stock Yards started?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. I think it was about 1883; possibly might have been 1882.

Q. The double track was built after the establishment of the stock yards there?

A. I think it was; yes, sir. I know it was.

Q. Do your records show exactly when they were constructed, Mr. Schermerhorn?

A. Yes, sir.

Q. Have you got the record here showing it?

A. I am not sure whether I have or not. This is a

record of the time of the construction of the sidetracks (referring to memorandum in his hand) between the Missouri River bridge and South Omaha, but it does not seem to show the record of the laying of the second track.

Q. Then, if I understand you, the first piece of double track was through the yard near the depot?

A. Yes, sir. The first was from the depot to about three miles west of the depot.

Q. From the Union Depot, or from the place where the present depot is?

A. Practically, yes, sir, to what we call the Summit.

Q. That was constructed in what year?

A. That was about 1883 or 1884.

Q. Is that what you would call the most southerly track?

A. Of the two main tracks?

Q. Yes, of the two main tracks.

A. Most of the way, yes, sir.

Q. Then about 1884 it was extended from the Summit down to about what point?

A. About, nearly a mile from South Omaha.

Q. Down as far as the present connection of the Rock Island Company?

A. Yes, sir, a little below that.

Q. When was it extended from there on to a connection with the Missouri Pacific?

A. You mean where the Missouri Pacific has a connection now?

Q. Yes, where they have a connection now, at Gilmore.

A. I think in 1890.

Q. In 1890?

A. I think so.

Q. And is that where the double track now ends?

A. It ends about a mile further west than the Missouri Pacific Junction.

Q. About a mile below the Missouri Pacific Junction?

A. About a mile further west.

Q. From there on the Union Pacific is a single track road?

A. The most of the way. Oh, there are two or three places on this division where we have a double track.

Q. Your records show, then, when you did construct that second track?

A. Yes, sir.

Q. Will you produce for us an exact statement from that record, Mr. Schermerhorn?

A. Yes, sir.

Q. Now, the bridge was reconstructed, and the double track laid from Council Bluffs to a connection with this double track you have referred to, about 1885 and 1886?

A. Yes, sir.

Q. At the time the bridge was reconstructed?

A. Yes, sir.

Q. What is your track which comes down from up north and connects with this line at about Twentieth street used for, or has it been used for?

A. Well, it is used principally now to reach the Omaha shop grounds and switching yard.

Q. That never was double tracked, was it?

A. Yes, sir, that is double tracked also.

Q. When was that double tracked?

A. That was double tracked in about 1885 or 1886, about the same time, possibly a little bit later.

Q. You mean double tracked down to the connection with the main line?

A. Yes, double tracked from the connection with the main line near Twentieth street to about the crossing north—nearly the north line of our shop grounds.

Q. Which are the two main tracks?

A. You mean on this map?

Q. Yes.

A. The north main track is divided off into one hundred foot lengths by small marks across the line. The next track south of that is the second main track.

Q. And that is the track you refer to as having been built in 1883 or 1884?

A. Yes, sir.

Q. Now what are the other tracks shown on this map between Twentieth street and the Rock Island connection at South Omaha?

A. Sidetracks.

Q. What are they used for?

A. They are used for switching and storage.

Q. About where in South Omaha do these yard tracks and sidetracks, and storage tracks, whatever you call them end?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

Q. That is, about what is the southern limit.

MR. BALDWIN: We object to that as incompetent, irrelevant and immaterial.

A. The southern limit, you mean?

Q. Yes.

A. It is about just this side of what we call Albright, just below the Chicago, Rock Island & Pacific junction.

Q. About how far below?

A. Possibly two thousand feet below.

Q. And from there they extend—from that point they extend clear to the eastern terminus at Council Bluffs, do they?

A. Those sidetracks?

Q. The sidetracks and yard tracks, whatever you call them.

A. There are more or less of those tracks all the way.

Q. What do you call the southern yard limits, at the same point, Albright?

MR. BALDWIN: That is objected to for the reason that it is incompetent, irrelevant and immaterial.

A. I don't know just to what you refer.

Q. I am referring to the Union Pacific.

A. Our Omaha yard limit runs to the end of the double track, ten miles from the station.

Q. And extends from there over to Council Bluffs?

A. Yes, sir; it is included in one yard.

Q. From Council Bluffs to where?

A. To the end of the double track at Gilmore.

Q. Is that all included in the one yard?

A. It is all designated as Omaha yards, yes, sir.

Q. Are you sure that from South Omaha to Gilmore is included in the Omaha yard?

A. Yes, sir, for operating, all included in the Omaha yard.

Q. I notice on this map, in yellow lines, "Western terminus of lands embraced in Saunders deed," marked on this map. What does that mean?

A. That indicates the boundary of property deeded to the Union Pacific by the deed from Saunders as trustee.

Q. Alvin Saunders?

A. Alvin Saunders.

Q. Now, have you marked separately on this map the property covered by that deed of Alvin Saunders?

A. No, sir.

Q. Do you know—have you ever platted out that land so as to show just what that is, Mr. Schermerhorn?

A. No, sir, I have not.

Q. You stated that the most northerly of the main tracks south of Twentieth Street is marked with white intersecting marks?

A. Yes, sir.

Q. Is that true also all the way to the east terminus of the line?

A. Yes, sir, it is.

Q. And the other main track is the one next southerly?

A. Yes, sir.

Q. On what track do the Burlington trains connect with their station grounds. Can you tell on this map, Mr. Schermerhorn?

Mr Baldwin: Connect with the Burlington station grounds?

Mr. Kellogg: Yes, certainly.

A. The south track across the Seventh Street bridge.

Q. Now, speaking generally of these sidetracks, other than the two main tracks that you have described, between the depot and the south yard limits, as described by you; were they added from time to time, say since 1883 or 1884, or if that is not the proper date, state the proper date.

A. Yes, sir, nearly all of them have been added since that date.

Q. Added, I suppose, as the business demanded it?

A. Yes, sir.

Q. And is that true east of the bridge, in Council Bluffs?

A. Yes. There haven't been as many changes made east of the bridge as there have been on this side, not nearly so many.

Q. Now, the Chicago, Burlington & Quincy, or the

Burlington & Missouri River tracks are shown in white on this map, southerly from the Union Pacific tracks are they not?

A. Yes, sir.

Q. At about what place on this map do the Burlington tracks begin to rise above those of the Union Pacific?

A. Just after crossing under the Tenth Street viaduct.

Q. From there to what point are they above the Union Pacific tracks?

A. To the Summit, about two miles west of our Union Station, our Union Passenger Station.

Q. At the place where the Burlington tracks cross the Union Pacific?

A. Yes, sir.

Q. That crossing is an overhead crossing?

A. Yes, sir.

Q. Did I ask you what the height of the embankment was east of the bridge?

A. Ye, sir.

Q. What is about the height of the embankment at the west end of the bridge?

A. About fifty feet.

Q. The tracks of the Burlington Company run underneath the tracks of the Union Pacific at that place?

A. Yes, sir.

Q. What is the topography of the country immediately south of the Union Pacific tracks all the way to South Omaha, whether it is hilly or level?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial

A. It is hilly.

Q. Immediately adjoining the Burlington tracks nearly all the way, is it not?

A. Yes, sir.

Q. And the Union Pacific tracks run through a sort of a valley?

A. Yes, sir.

Q. To South Omaha?

A. Runs through two valleys. It crosses a divide.

Q. The Burlington Station and depot grounds are right up against the bluff, are they not?

A. Well the bluff is excavated to make the present ite of the Burlington Station.

Q. Then they do, what you might say, butt right up gainst the bluff?

A. Yes, sir.

Q. From Twentieth Street north, state whether the ld line of the Union Pacific is higher than what you have lescribed as the new line?

A. No, sir, it is lower.

Q. I mean lower.

A. Yes, sir.

Q. Say opposite—how much lower at Tenth Street?

A. About fifteen feet.

Q. You haven't those figures exactly?

A. No, sir.

Q. Will you make a memorandum and give them to ne, giving me those figures extending from Sixth Street to Twentieth Street?

A. Yes, sir.

Q. I notice on this map United States Quartermaster's Department or Depot. What buildings are situated adjoining the Union Pacific right of way in the block, bounded by Twenty-second and Twentieth Streets?

A. The buildings belonging to the Commissary Department of the United States.

Q. The Union Pacific Company has a sidetrack into those buildings?

A. We have a sidetrack on the right of way adjoining.

Q. That is, the sidetrack is on Union Pacific property?

A. Yes, sir.

Q. Now that sidetrack is how much lower than the main tracks?

A. Possibly six or eight feet.

Q. Will you please get that for us and be able to state definitely at each corner, say?

A. Yes, sir.

At this point the further taking of testimony was adjourned until 10 o'clock a. m., Tuesday, April 21, 1903.

Tuesday, April 21, 1903.

Met pursuant to adjournment at 10 o'clock a. m., and the further taking of testimony was proceeded with, as follows:

Mr. Augustus D. Schermerhorn, the witness on the stand at the time of adjournment, is recalled, and his direct examination is continued as follows:

By Mr. Kellogg:

Q. Mr. Schermerhorn you were going to procure the levels of the Burlington track over that of the Union Pacific track at certain points where it parallels the Union Pacific line. Please state the places, with reference to this map, and the difference in elevation of the Burlington and Union Pacific tracks.

Mr. Baldwin: This is objected to as incompetent, irrelevant and immaterial.

A. At Twentieth Street the Burlington track is twenty-one feet higher than the Union Pacific.

Q. That is a rise from the top of the rail to the top of the rail.

A. Yes, sir, between the same points. At Twenty-fourth Street twenty feet higher, at Martha Street fifteen feet higher, at Bancroft Street fifteen feet higher, at Vinton Street twenty feet higher, at the overhead crossing twenty-four feet higher, at Seventeenth Street it is thirteen feet higher, at Sixteenth Street nine feet higher, at Fourteenth Street five feet, at Thirteenth Street four feet, at Eleventh Street one foot, at Tenth and Seventh Streets practically the same as the Union Pacific. I would like to say in connection with this that I have been obliged to use some old levels and possibly there may have been some slight changes, but not many, in the levels of one track or the other, that may have changed the heights a little.

Q. At the crossing, the Burlington crossing over the Union Pacific at South Omaha, the difference is what?

A. About twenty-four feet.

Q. So it rises about three feet from Twentieth Street to Twenty-fourth?

A. About three feet more than the Union Pacific.

Q. What is the grade of the Union Pacific tracks from its passenger station to the Burlington crossing at South Omaha?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. The grade from the Union Passenger Station to Twentieth Street is about eight-tenths per cent., from Twentieth Street to about mile post 3 is 1.25 per cent., from mile post 3 to the Burlington crossing it is about four-tenths per cent.

Q. Now, a one per cent. grade is fifty-two feet to the mile, is it?

A. Yes, sir, 52.8 feet to the mile.

Q. Now, can you state the difference of the levels in the sidetrack and spur track opposite the United States Government buildings and the Union Pacific main line track adjoining it?

A. The sidetrack is twenty-two feet lower than the main track, and the spur track nine feet lower.

Q. Please state the difference in levels between the sidetrack extending between Twentieth and Nineteenth Streets, and the main track.

A. About twenty-two feet.

Q. That is, the sidetrack is about twenty-two feet lower?

A. Lower than the main track.

Q. And how is it between Nineteenth and Eighteenth Streets?

A. About nineteen feet lower.

Q. And the tracks in the block between Seventeenth and Eighteenth Streets?

A. About sixteen feet lower.

Q. And the tracks in the block between Seventeenth and Sixteenth Streets?

A. About fourteen feet lower.

Q. What other levels did you take, and at what places?

A. Well, I made a memorandum of the difference in elevation between the main upper track and the main track leading down to the shops, on the several streets east of Twentieth Street.

Q. Please give us those differences in levels.

A. At Seventeenth Street the hill track is thirteen feet lower than our main track. At Sixteenth Street it is fifteen feet lower, at Fourteenth Street it is twenty-one and one-half feet lower. At Thirteenth Street it is twenty-

three feet lower. At Eleventh Street it is twenty-eight feet lower. At Tenth Street it is twenty-seven feet lower. At Seventh Street it is forty-one feet lower.

Q. Now, will you please state the correct dates of the construction of the double track and between what points, correcting your testimony of yesterday?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. From Council Bluffs to the Missouri River th second track was constructed in 1887. From Omah to Summit, in 1883.

Q. What do you mean by Omaha?

A. From the Omaha Union Depot.

Q. To the Summit?

A. In 1883.

Q. Now stop right there. I don't know as we located the Summit.

A. The Summit is the same as the Burlington overhead crossing. From the Summit to mile post 5 in 1884; from mile post 5 to mile post 6 in 1887; from mile post 6, which is Albright, to Gilmore in 1890. The double track bridge was commenced September 22, 1885, and completed November 10, 1887; used as a double track from October 1, 1887.

Q. The mile posts show on this map, Exhibit 4-a, do they, Mr. Schermerhorn?

A. Yes, sir.

Q. Now, Mr. Schermerhorn, referring to plaintiff's Exhibit 4-c, does this show inside the red lines the property of the Union Pacific Railroad Company?

MR. BALDWIN: This is objected to as incompetent, irrelevant and immaterial.

MR. KELLOGG: That is, as I understand it, you do not object to us showing the title in the Union Pacific by his testimony instead of by the records. That is not the feature to which you object?

MR. BALDWIN: No, I don't object to the fact that he testifies as to what he knows of the Union Pacific property. That is not the reason, it is for other reasons that I object.

A. Yes, sir.

Q. The white lines from the Missouri river bridge are tracks of the Union Pacific Company?

A. Union Pacific and other companies.

Q. The tracks, including the tracks across the bridge to where the tracks separate at the terminal at passenger junction, are the tracks of the Union Pacific Railroad Company, are they?

A. Yes, sir.

Q. Now, are the most northerly tracks, which are marked "U. P." tracks on this map and extending to Broadway in Council Bluffs, the tracks of the Union Pacific Railroad Company?

A. Yes, sir.

Q. Are Union Pacific tracks marked "Union Pacific" here, U. P. R. R., and the other tracks marked by the various companies?

Question withdrawn.

Q. Are all the tracks between the yellow lines, which are marked on this map, "Proposed Chicago Great Western R. R.," and the west end of the bridge, shown in white on this map, tracks of the Union Pacific Railroad Company?

A. Yes, sir.

Q. Well, generally speaking, then, are the tracks that are marked "U. P. R. R." on this map in white lines all Union Pacific tracks?

A. Yes, sir.

Q. And the tracks marked "C & N. W. Ry." are the Chicago & Northwestern tracks?

A. Yes, sir.

Q. And the tracks marked C. B. & Q. R. R. are the Chicago, Burlington & Quincy tracks?

A. Yes, sir.

Q. And the tracks marked C., R. I. & P. Ry. are the tracks of the Chicago, Rock Island & Pacific Railway?

A. Yes, sir.

Q. And the tracks marked K. C., St. Joe & C. B. are the Kansas City, St. Joe and Council Bluffs tracks?

A. Yes, sir.

Q. And the tracks marked O. St. L. Ry. are the Omaha & St. Louis tracks?

A. Yes, sir.

Q. All of these lines terminate here in Council Bluffs?

A. Yes, sir.

Q. Now do you know the elevation of the grade between the river and the transfer station in Council Bluffs?

A. The difference, I think, is forty-five feet.

Q. You don't know the grade at various places, the height of the embankment at various places?

A. No, sir, it varies generally from about fifty feet at the Missouri River to practically nothing at the passenger station.

Q. The passenger station is marked here isn't it on this map?

A. It is marked Transfer Depot.

Q. Transfer Depot?

A. Yes, sir.

Q. This map is drawn on what scale? (Exhibit 4-c.)

A. Four hundred feet to the inch.

Q. I show you plaintiff's Exhibit 4-d. Please state what this map shows?

A. It shows the present line of the Union Pacific from about "L" Street, South Omaha, to Gilmore.

Q. Gilmore is the terminus of the double track that you spoke about yesterday?

A. The present end of the double track, yes, sir.

Q. Does this map show the property owned by the Union Pacific Railroad Company between those points?

A. Yes, sir.

Q. And the present location of their tracks?

A. Yes, sir.

Q. And the connections with other companies?

A. Yes, sir.

Q. I notice here at the place called Gilmore Junction, tracks of the "Mo. Pac. Ry.," Missouri Pacific Railway, I suppose, is that?

A. Yes, sir."

Q. Is that their connection?

A. That is their connection with their line from the south.

Q. I also notice "B. & M. R. R. in Neb." Does the Burlington & Missouri River Railroad connect there too?

A. Yes, sir.

Q. Mr. Schermerhorn, does the Burlington & Missouri River use any part of the track between Gilmore

Junction, where this connection is shown, and South Omaha or Omaha?

MR. BALDWIN: This is objected to as incompetent, irrelevant and immaterial.

A. They do between Gilmore and South Omaha.

Q. What trains do they run over that track?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Passenger and freight.

Q. Do you know to what point at South Omaha?

A. A junction with the Stock Yards Company's lines near the passenger depot.

Q. This map is on what scale?

A. Four hundred feet to the inch.

MR. KELLOGG: I offer in evidence plaintiff's Exhibit 4-d.

MR. BALDWIN: That is objected to for the reason that it is incompetent, irrelevant and immaterial.

Q. Now, Mr. Schermerhorn, Exhibits 4-a, 4-b, 4-c and 4-d show your line from its eastern terminus in Council Bluffs to Gilmore?

A. Yes, sir.

MR. KELLOGG: Plaintiff now offers in evidence plaintiff's Exhibit 6, marked "Union Pacific Railway Company, Nebraska Division, Bridge District, Employes' Time Table."

MR. BALDWIN: It is objected to as incompetent, irrelevant and immaterial, but defendant waives its identification and admits that it is the existing time table in effect on the bridge district at this time.

Witness excused.

Plaintiff's Exhibit 6 being read in evidence, is as follows:

(SEE EXHIBIT 6 ATTACHED HERETO.)

W. J. C. Kenyon is here duly called and sworn as a witness on the part of the complainant. Testified as follows:

DIRECT EXAMINATION.

By Mr. Kellogg:

Q. Please state your name and your official position with the Stock Yards Company.

A. William J. C. Kenyon, General Manager.

Q. How long have you been General Manager of the Stock Yards? First, you may state whether or not your position is that of General Manager of the Union Stock Yards?

A. Of the Union Stock Yards Company of Omaha, Limited.

Q. How long have you been General Manager?

A. Since July 1, 1897.

Q. The Stock Yards are located at South Omaha, are they?

A. Douglas County, yes, sir.

Q. State, if you recollect, about the population of South Omaha?

A. According to the census of 1900 it is 26,001.

Q. Do the limits of Omaha and South Omaha coincide?

A. They are contiguous.

Q. State whether the country along the tracks of the Union Pacific Railroad between Omaha and South Omaha is more or less continuously settled up and inhabited?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Practically settled up between the two towns along certain streets, not necessarily along the line of the Union Pacific road.

Q. Well, along the residence streets leading from Omaha to South Omaha?

A. Yes, sir.

Q. Take it east or southeast of the tracks of the Union Pacific, is it settled all the way from South Omaha to Omaha?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. Generally describe the location of the residence or the business portion of the two cities, showing their contiguous limits and condition, will you, Mr. Kenyon?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. The country is somewhat hilly and rolling between the two cities, and naturally the residence portion is on the hillsides, with numerous small residences in

the valleys. It is natural, of course, that the railroad company would seek a low grade in getting from Omaha to South Omaha. It is customary in the lower valley section for small residences to be located, the better class of building, of course, being on the table land.

Q. Does the map which I show you, being the plaintiff's Exhibit 2, Mr. Kenyon, which purports to be a map of Omaha and South Omaha—state whether generally that gives a correct description of the location of the two cities?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. It does.

Q. The stock yards and the packing houses are located at South Omaha?

A. They are.

Q. State whether the street cars run from Omaha to South Omaha?

MR. BALDWIN: Defendant objects to that as incompetent, immaterial and irrelevant.

A. They do.

MR. BALDWIN: I simply want to object to this line of questioning, and if the record could show that without my making a specific objection to each question, I would like it to be done that way.

MR. KELLOGG: You can state generally that all this class of testimony is objected to as incompetent, irrelevant and immaterial, and it can all go in subject to that objection.

MR. BALDWIN: It can be understood that this line of testimony is all objected to as incompetent, irrelevant and immaterial, and that the defendant is not required to object to each interrogatory as it is propounded.

MR. KELLOGG: That is correct.

Q. Does the same street car company run cars in South Omaha as in Omaha?

A. It does.

Q. And no other?

A. No other.

Q. Are the streets, some of the streets, paved all the way from Omaha into South Omaha?

A. They are.

Q. Does the same gas company have mains in South Omaha as in Omaha?

A. It does.

Q. Continuous, extending from one city to the other?

A. Yes, sir.

Q. How about the electric light company?

A. The same thing.

Q. How about the water company?

A. The same water company.

Q. Is it a city company, or is it under private ownership?

A. Private ownership.

Q. The water mains extend from one city to the other. How about the telephone company?

A. Same telephone company too.

Q. Service at both places?

A. Yes, sir.

Q. Will you please state what packing houses are located at or in the vicinity of the Union Stock Yards in South Omaha?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. The Hammond Packing Company, the Cudahy Packing Company, Swift & Company, The Omaha Packing Company and Armour & Company.

Q. Do you know about when these packing houses were first established there?

MR. BALDWIN: Objected to as incompetent, irrelevant and immaterial.

A. I think that the Hammond Packing Company was established in 1885, and the other companies have been established since that time, the last one, Armour & Company, having been established in June, 1898.

Q. That is Armour & Company built their house, and it was opened in 1898?

A. Yes, sir.

Q. Do you know when Swift & Company first established a packing house there?

A. I can't say of my own knowledge without looking up the record. These other packing houses were in operation when I came here.

Q. When did you come here, Mr. Kenyon?

A. In 1897.

Q. You have also located there large stock yards, have you not?

A. Yes, sir.

MR. BALDWIN: I object to the last question as incompetent, irrelevant and immaterial.

Q. What is the capacity of those yards. State how much stock is handled there in a year?

MR. BALDWIN: Objected to as incompetent, irrelevant and immaterial.

A. I can give you the figures in our nineteenth annual report, of the year 1902, on page 38. The total receipts by years, the grand total for nineteen years being shown. In the nineteen years since the yards were opened there have been received there 11,358,300 head of cattle, 27,534,065 head of hogs, 9,174,833 sheep, 275,913 horses and mules.

Q. How many were received there last year that you have a report of?

A. 1902 you mean?

Q. Yes.

A. 1,010,815 head of cattle, 2,247,428 head of hogs, 1,742,539 sheep, 42,079 head of horses and mules. As to the capacity of the yards: We have a daily capacity of 35,000 hogs, 20,000 cattle and 35,000 sheep. Our average daily receipts are, taken for the last year, 8,000 hogs, 3,370 cattle and 5,730 sheep; and the daily slaughtering capacity of the five packing houses is 17,500 hogs, 10,000 cattle and 8,000 sheep.

Q. How many carloads of cattle, hogs and sheep were shipped into your yards during 1902?

A. Seventy-nine thousand five hundred and ninety-two cars of all kinds of live stock, and there was shipped out 19,986 cars.

MR. A. B. STICKNEY: Of live stock?

THE WITNESS: Yes.

MR. BALDWIN: What is that?

THE WITNESS. Of live stock.

Q. That is all kinds of live stock?

A. Yes, sir.

Q. Can you give us a statement of the number of cars of live stock and packing house products of all kinds shipped in and shipped out of South Omaha during 1902?

A. I can't very well answer that question, but I can tell you the total number of carloads of all kinds of mater-

ial, including live stock and packing house products, that have been shipped in and shipped out during the last year.

Q. Will you please give us that?

A. This would cover coal, ice, salt, tin, cooperage, lumber, packing house products, live stock, hay, grain, sand, ties, brick and miscellaneous shipments, 172,204 carloads.

Q. That is in and out?

A. Yes, sir.

Q. Now, that is simply the shipments in and out of the packing house and stock yards?

A. Handled by the Stock Yards Company. That does not include shipments by the Union Pacific and the Burlington, with the exception of live stock and packing house products which is figured in this statement.

Q. That is simply the amount handled over other roads and delivered to the Union Stock Yards?

MR. KELLOGG: That question is withdrawn.

Q. That is simply the business to and from the Union Stock Yards?

A. Yes, sir.

Q. Now that does not include, you say, the business shipped by the Union Pacific, or by the Burlington, except the live stock?

A. The live stock in and the packing house products out, and some cars of packing house products in.

MR. BALDWIN: Well, what you mean by that other business is the city business?

A. Yes, I don't know what the city business of the Union Pacific and the Burlington is.

Q. Well, is that all of the packing house products that come out of Omaha or into Omaha?

A. Yes, sir. The packing house products must all pass through the stock yards tracks.

Q. Now, are there other industries at South Omaha besides the packing houses and the stock yards?

A. Well, all the businesses that are usually established in a city of the size and importance of South Omaha.

Q. Can you name some of the industries that are located there?

A. Yes, there is the Omaha Cooperage Company, and the Nebraska Brick Company that are located on our

tracks. They figure in this statement, of course; and there are large coal companies and lumber companies.

Q. Brewers?

A. Yes, breweries. The Jetter Brewery and the Krug Brewery is between the two cities.

Q. Then there is all the general business of a city of that size, which you do not include in your statement?

A. Yes, sir. You will understand that South Omaha, with a population of only 26,000 inhabitants, does a larger carload business than the city of Des Moines, with a population of 75,000. I noticed a statement the other day that in 1901 Des Moines handled 132,000 carloads in and out. In the South Omaha Stock Yards in 1902 we handled 172,204 cars, with a population of only 26,000.

Q. Was that because the business men and the business people doing business there largely live in Omaha?

A. Well, I wouldn't say that. Of course, the employes of the packing houses and stock yards mostly live in South Omaha, and a great many of the business people live in Omaha, that is true.

Q. And go to and come from the packing houses every day?

A. Yes, sir. I don't know how many. I saw a statement some time back that about 400 people, the heads of departments, officers and such.

Q. Now, Mr. Kenyon, you had a book there which showed the yearly shipments. Will you let me see that? (Witness passes to counsel the little book referred to.) Is that the yearly report of the Union Stock Yards Company for the year 1902?

A. Yes, sir.

Q. Now, Mr. Kenyon, have you a statement showing the origin of the live stock shipments by states during the years 1901 and 1902?

A. I have.

Q. Where is it? What was it published in?

A. This statement shows the receipts of all kinds of live stock at seven western markets during the last two years, the states in which the shipments originated, and it was published in the Daily Drover's Journal-Stockman on March 14, 1903. It was compiled from the official records of the different stock yards companies, and the

seven western markets referred to are Chicago, Kansas City, South Omaha, St. Joe, St. Louis and St. Paul.

Q. Does this show the origin of the stock coming to the stock yards?

A. Yes, sir.

Q. And to what place it was shipped?

A. Yes, sir.

Q. And the number of cattle, hogs, sheep, horses and mules?

A. Yes, sir.

Q. I show you a table marked "receipts of cars," published in your annual report. State whether that shows—state what that shows.

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial. I do not want to reach the question of the correctness of that. The objection is made on some other line. I have no doubt it is correct.

MR. WOOLWORTH: Why not ask him if that statement is correct.

A. That statement is correct.

MR. BALDWIN: I object to all of this evidence as incompetent, immaterial and irrelevant, but I will take Mr. Kenyon's statement about the correctness of the statement without any further proof or identification or any further proof as to the authenticity of the compilations made.

MR. KELLOGG: I offer the statement referred to, in evidence.

MR. BALDWIN: We object to that as incompetent, irrelevent and immaterial, it being understood that this objection is not to reach the correctness or the authenticity of the compilation.

The statement referred to, being read in evidence, is as follows:

(SEE NEXT PAGE.)

## Receipts of Cars by Railroads for the Years 1884-1902.

| ROADS | 1884 | 1885 | 1886 | 1887 | 1888 | 1889 | 1890 | 1891 | 1892 | 1893 | 1894 | 1895 | 1896 | 1897 | 1898 | 1899 | 1900 | 1901 | 1902 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Mil..... | 18 | 40 | 18 | 573 | 652 | 1,286 | 1,347 | 1,469 | 1,155 | 731 | 1,202 | 1,037 | 599 | 1,309 | 1,388 | 1,762 | 2,170 | 3,190 | 3,070 |
| Wabash. ..... | | 28 | 96 | 599 | 705 | 1,014 | 1,321 | 1,197 | 985 | 886 | 706 | 445 | 440 | 490 | 737 | 668 | 791 | 858 | 806 |
| Mo. Pac. | 1 | 427 | 1,565 | 1,307 | 1,604 | 1,842 | 2,281 | 2,576 | 2,454 | 1,793 | 1,999 | 1,663 | 1,925 | 2,401 | 3,507 | 3,631 | 2,599 | 2,020 | 1,648 |
| U. P..... | 4,427 | 6,856 | 7,932 | 11,013 | 13,335 | 12,205 | 14,423 | 12,055 | 14,724 | 15,533 | 15,789 | 9,520 | 11,824 | 14,296 | 16,938 | 15,978 | 16,593 | 14,168 | 15,946 |
| C.&N.W. | 12 | 31 | 66 | 402 | 465 | 1,211 | 1,104 | 847 | 494 | 430 | 1,061 | 615 | 293 | 330 | 578 | 1,021 | 1,072 | 2,717 | 4,966 |
| F. E..... | ..... | 360 | 1,308 | 3,570 | 684 | 8,061 | 10,057 | 10,721 | 12,164 | 10,722 | 12,299 | 9,034 | 10,430 | 13,549 | 15,069 | 15,489 | 16,957 | 16,330 | 17,783 |
| S. C.&P. ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 17 | 537 | 523 | 720 | 695 | 577 | ..... |
| M.&O... | 22 | 161 | 1,037 | 2,261 | 2,090 | 3,249 | 3,670 | 4,361 | 5,004 | 4,355 | 4,682 | 2,972 | 2,875 | 4,679 | 4,714 | 5,380 | 5,558 | 5,954 | 6,300 |
| B.& M.. | 5 | 748 | 2,554 | 8,076 | 10,879 | 12,084 | 17,368 | 12,011 | 17,348 | 19,592 | 18,649 | 10,323 | 12,200 | 17,088 | 18,622 | 17,676 | 18,122 | 15,381 | 17,686 |
| C.B.&Q. ..... | ..... | ..... | ..... | ..... | 118 | 1,288 | 2,105 | 2,336 | 1,223 | 1,285 | 1,931 | 2,023 | 1,894 | 1,668 | 2,354 | 2,594 | 3,466 | 4,118 | 3,160 |
| K. C..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 172 | 1,187 | 789 | 1,531 | 840 | 954 | 834 |
| R. I. (E) | 21 | 46 | 71 | 476 | 545 | 971 | 1,089 | 1,534 | 853 | 874 | 837 | 819 | 685 | 1,176 | 1,371 | 1,233 | 1,749 | 566 | 4,594 |
| R. I. (W) | .... | ..... | ..... | ..... | ..... | ..... | ..... | 178 | 1,547 | 2,489 | 2,168 | 1,483 | 1,404 | 1,115 | 1,071 | 1,087 | 1,238 | 1,225 | 1,609 |
| I. C..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 357 | 1,135 | 1,190 |
| Total.... | 4,506 | 8,697 | 14,647 | 28,277 | 31,077 | 43,211 | 54,765 | 49,285 | 57,951 | 58,690 | 61,323 | 39,884 | 44,758 | 59,823 | 67,611 | 68,770 | 72,207 | 73,193 | 79,592 |

Q. Is the next, showing the shipment of cars from 1884 to 1902, the shipments out of the stock yards?

A. Yes, sir.

Q. Of live stock?

A. Yes, sir.

Q. By railroads?

A. Yes, sir.

Q. That is correct, is it?

A. That is also correct.

MR. KELLOGG: I offer this statement in evidence.

MR. BALDWIN: To the introduction of the statement referred to, in evidence, defendants object for the reason that the same is incompetent, irrelevant and immaterial, it being understood that this objection is not to reach the correctness or authenticity of the compilation.

The statement referred to, being read in evidence, is as follows:

(SEE NEXT PAGE.)

## Total Shipments of Cars for the Years 1884-1902.

| ROADS | 1884 | 1885 | 1886 | 1887 | 1888 | 1889 | 1890 | 1891 | 1892 | 1893 | 1894 | 1895 | 1896 | 1897 | 1898 | 1899 | 1900 | 1901 | 1902 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Mil ..... | 796 | 904 | 811 | 1,720 | 2,457 | 1,401 | 2,466 | 2,451 | 5,411 | 3,416 | 3,682 | 1,962 | 1,539 | 1,639 | 2,196 | 1,211 | 1,543 | 1,138 | 1,067 |
| Wabash . | 85 | 85 | 68 | 109 | 351 | 277 | 231 | 602 | 411 | 482 | 419 | 211 | 279 | 266 | 309 | 329 | 406 | 233 | 655 |
| Mo. Pac. | 9 | 71 | 67 | 134 | 113 | 280 | 360 | 250 | 255 | 317 | 842 | 1,220 | 340 | 389 | 399 | 413 | 354 | 331 | 593 |
| U. P..... | 112 | 306 | 311 | 482 | 592 | 920 | 722 | 795 | 680 | 833 | 537 | 478 | 622 | 1,062 | 976 | 1,045 | 1,041 | 837 | 1,369 |
| C.& N.W. | 516 | 1,059 | 1,747 | 2,439 | 2,601 | 3,173 | 3,972 | 3,078 | 2,277 | 2,315 | 1,879 | 1,447 | 1,742 | 2,076 | 2,373 | 1,674 | 1,655 | 1,247 | 1,921 |
| F. E..... | ..... | ..... | ..... | 2 | 197 | 339 | 430 | 428 | 475 | 1,083 | 881 | 472 | 733 | 1,688 | 1,290 | 1,314 | 1,212 | 1,452 | 1,918 |
| S. C. & P. | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 3 | 15 | 60 | 38 | 60 | 23 | ..... |
| M. & O.. | 37 | 111 | 127 | 143 | 211 | 207 | 439 | 610 | 707 | 850 | 454 | 282 | 602 | 1,308 | 943 | 1,054 | 970 | 807 | 1,383 |
| B. & M.. | 1,164 | 1,686 | 2,138 | 2,747 | 3,589 | 815 | 551 | 669 | 821 | 942 | 859 | 422 | 570 | 1,541 | 941 | 1,157 | 1,160 | 1,076 | 1,457 |
| C. B. & Q. | ..... | ..... | ..... | ..... | 166 | 5,555 | 7,578 | 4,432 | 5,213 | 5,772 | 6,142 | 3,935 | 3,279 | 2,628 | 3,834 | 2,208 | 2,472 | 1,842 | 3,017 |
| K. C..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 75 | 1,226 | 1,880 | 623 | 582 | 1,016 | 2,998 |
| R. I. (E).. | 1,456 | 1,115 | 1,417 | 2,867 | 4,242 | 867 | 770 | 1,282 | 1,273 | 1,463 | 1,283 | 1,248 | 1,199 | 1,572 | 1,312 | 1,386 | 1,828 | 1,211 | 2,380 |
| R. I. (W). | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 6 | 58 | 103 | 205 | 124 | 97 | 137 | 74 | 93 | 131 | 93 | 144 |
| I. C..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 811 | 767 | 1,084 |
| Total.... | 4,175 | 5,337 | 6,686 | 10,643 | 14,519 | 13,834 | 17,519 | 14,603 | 17,581 | 17,576 | 17,163 | 11,796 | 11,080 | 15,547 | 16,587 | 12,545 | 14,225 | 12,073 | 19,986 |

Q. Where does most of the live stock shipped out of the South Omaha stock yards go to?

A. Cattle and sheep principally to Nebraska and Iowa.

Q. For what?

A. For feeding purposes.

Q. And the hogs?

A. Well, there are no hogs shipped out. All the hogs received there are killed, and we can kill many more than we get.

Q. Now South Omaha gets cattle, hogs and sheep from about how far into Iowa?

A. Oh, for about a hundred miles, and occasional shipments from a little further—125 to 140 miles, but that is an exception.

Q. Have you any way of estimating, Mr. Kenyon, the total shipments in and out of South Omaha, by all railroads, of all kinds of products?

A. I have had no occasion to figure that, so I have paid no attention to it.

Q. Where does most of the packing house product shipped out of South Omaha go to?

A. I don't know.

Q. You are not familiar with other shipments, other than as they go over the tracks of the Union Stock Yards Company?

A. That is all. We do not bill any packing house products, all cars being listed to us for switching to other lines.

Q. Have you any general knowledge as to where they go?

A. No, sir.

Q. Isn't it a fact, Mr. Kenyon, that a majority of the packing house products from the packing houses at South Omaha go east?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. As to that, I have no information, whatever. It is not in my line of work, and I have made no inquiry into it.

Q. Do you know the capacity of those packing houses, as a whole, at South Omaha, compared with Kansas City, say as to the number of hogs killed?

A. In an ordinary season South Omaha kills about 60 per cent. or about 70 per cent as many hogs as Kansas City; about 40 per cent. as many cattle, and does immeasurably more in the sheep business than Kansas City.

Q. Is Kansas City the largest packing house center in the country?

A. No, Chicago.

Q. How is South Omaha compared with Chicago?

A. We do about 25 per cent. as much cattle business, and about 40 per cent. of the hog business, and something like 35 per cent of the sheep.

Q. Now, Mr. Kenyon, state, with reference to other cities of Nebraska, the relative importance, commercially, of the industries at South Omaha in the employment of labor and in other respects.

MR. BALDWIN: We object to this as incompetent, irrelevant and immaterial.

A. According to the census—the government census of 1900—25 per cent. of all of the wage earners in the State of Nebraska were engaged in business at South Omaha, and 49 per cent. of the value of all manufactured products in the State were manufactured at South Omaha. I think that is about the best way that I can answer that question.

Q. Do these industries, many of them do their financial business, their banking business, in Omaha?

A. And South Omaha.

Q. And the business men who manage the industries at South Omaha, live at Omaha?

A. In both places.

Q. Then, commercially speaking, these two places are practically one city, one large city?

A. They are.

Cross-examination waived.

Witness excused.

George W. Craig is here called and sworn as a witness on the part of the complainant. Testified as follows:

DIRECT EXAMINATION.

By Mr. Kellogg:

Q. What is your occupation?

A. Assistant City Engineer of Omaha.

Q. How long have you been Assistant City Engineer of Omaha?

A. For three years, acting assistant one year.

Q. Have you a map which shows accurately the topography of the City of Omaha?

A. Yes, sir.

Q. Will you produce it?

Witness produces a map which is marked plaintiff's Exhibit 7.

Q. I show you plaintiff's Exhibit 7. Does this map correctly show the topography of the City of Omaha?

A. Yes, sir.

What is the red line marked "Union Pacific" running across the map?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. It is the line of the Union Pacific between Omaha and South Omaha.

Q. Between the Missouri River and South Omaha?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. What are the black figures upon the Union Pacific track?

A. The elevations of their line.

Q. Above what point?

A. Above low water mark of the Missouri River.

Q. What are the white figures on this map?

A. The larger figures?

Q. No, the small figures, the small white figures?

A. The elevations of contours, elevations above the Missouri River.

Q. Are those from actual measurements?

A. Yes, sir.

Q. Is there a measurement of them in the engineer's office?

A. Yes, sir.

Q. Is this map correct?

A. Yes, sir.

Q. What are the large figures on this map?

A. Representing the sections as divided by the government, the government subdivisions rather.

Q. What are the next smaller figures, between the small figures and the larger ones?

A. Street numbers and names.

Q. Generally speaking, what is the country—what is the topography of the country lying south and east of the Union Pacific tracks in the City of Omaha?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. Rather hilly and rough.

Q. How is it west and north of it?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. Nearly the same, possibly not quite so rough.

Q. Does the Union Pacific line from the depot, or near the depot, to South Omaha, run through a valley?

A. Yes, sir.

Q. Is it a wide or narrow valley?

A. It is narrow in places, and in some localities what you might term wider.

Q. I show you plaintiff's Exhibit 8. State whether or not this map correctly shows the location of the Union Pacific Railroad line from the crossing of the Missouri River, to and including South Omaha, or a part of South Omaha?

A. Yes, sir, it does.

Q. Does this map also show elevations along the line?

A. It does.

Q. Please state what each one of the colors on this map represents.

A. The lines covered by—it is a purple color, are from twenty to forty feet above the Union Pacific tracks.

Q. Can we not number the colors, designate the colors by numbers so they can be more definitely referred to?

A. Yes.

(The colors are numbered 1, 2, 3, 4, 5 and 6.)

Q. Color number 1 shows what?

A. An elevation of the land immediately adjoining the Union Pacific, ranging from twenty to forty feet above the Union Pacific tracks.

Q. Number 2?

A. From forty to sixty feet.

Q. Number 3?
A. Sixty feet and above.
Q. Number 4?
A. Ten to twenty feet below.
Q. Number 5?
A. Twenty to thirty feet below.
Q. Number 6?
A. Thirty and over.
Q. Below?
A. Below.
Q. Is this map a correct map of the topography of the country?
A. Substantially, yes.
Q. Has it been checked up in your office?
A. Yes, sir.
Q. With your topographical map of the city?
A. Yes, sir.
Q. State what the figures in circles along the line of the Union Pacific track represent?
A. They represent the elevations of the tracks at those different points.
Q. Above what?
A. Above the low water mark of the Missouri River.
Q. What do the small figures outside represent, those not in the circles?
A. Represent the elevations of the intersections—street intersections, at the points as indicated.
Q. Take the property marked "U. P. Ry. property," in red ink, between Lincoln Street and Martha Street, on this map, is that the property shown on the other maps as Union Pacific Railway property?
A. Yes, sir.
Q. Now, what is the elevation of the upper edge of that property in the street furthest from the track, in the center of the street, above the Union Pacific tracks?
A. The upper edge is nearly forty feet above the Union Pacific tracks.
Q. Above the main line tracks?
A. Yes, sir.
Q. What is the elevation above the Union Pacific sidetrack at that point?
(Question withdrawn).

MR. KELLOGG: I now offer these two maps, plaintiffs' Exhibits 7 and 8, in evidence.

MR. BALDWIN: To the introduction of the exhibits referred to, in evidence, the defendants object for the reason that the same are incompetent, irrelevant and immaterial.

Q. Referring to Exhibit 7, state the elevation of some of the principal hills, east and south of the Union Pacific tracks west of Omaha.

A. Do you want their summits?

Q. Yes, their summits.

A. At Twentieth and Oak Streets is an elevation of 250 feet above.

Q. Two hundred and fifty feet above the river?

A. Above the river. At Fifteenth and Vinton Streets there is an elevation of 245 feet. At Tenth and Castellar there is an elevation of 245 feet.

Q. Go ahead.

A. At Seventh and Pine Streets an elevation of 225 feet, at Eleventh and Pierce Streets an elevation of 190 feet.

Q. Referring to Exhibit 8, state what the topography east is, immediately joining the Burlington Depot and the Burlington tracks between their depot and Twelfth Street?

A. On which side?

Q. On the south side.

A. Very abrupt.

Q. A high hill there?

A. Yes, sir.

Q. About how high above the tracks of the Burlington road?

A. From sixty to eighty feet above, within a distance of a block and a half or two blocks.

Q. On the other side of the Union Pacific, opposite the Union Pacific Depot, state what the topography of the City is, whether it is lower than the Union Pacific tracks?

A. It is lower.

Q. Did you make a survey and a profile of the Union Pacific approach on the east side of the Missouri River, showing the height of the embankments?

A. I had one made under my direction.

Q. From actual survey?

A. Yes, sir.

Q. Who made it?
A. Mr. Roberts.
Q. Is he here?
A. Yes, sir.
Q. I show you plaintiff's Exhibit 4-a. Did y make that map in your office?
A. Yes, sir.
Q. This map shows on its face here the proper owned by the various railroad companies, does it not?
A. Yes, sir, as it appears of record.
Q. What is that colored yellow?
A. Purchased by the City of Omaha and granted the Union Pacific Railway Company, as per Saunde deed.
Q. Did you take that from the Saunders deed?
A. Yes, sir.
Q. And platted it on this map?
A. Yes, sir.
Q. That is the property described in the Saunde deed?
MR. BALDWIN: Objected to as incompetent.
A. Yes, sir.
Q. Are the blocks, the lots and the street numbe correctly stated on this map?
A. Yes, sir.
Q. That is, the lots and the blocks and the stre of the City of Omaha?
A. They are.
Q. State in what block the Union Pacific Depot situated.
A. Two hundred and four.
Q. Is it marked U. P. Depot—"Union Depot?"
A. Yes, sir.
MR. BALDWIN: We object to all of this as being i material. This is simply putting the map in evidence a then asking him to read what appears on the face of t map.
MR. KELLOGG: Yes, I think it is sufficiently des nated here.
MR. BALDWIN: He has said that the map is corre and I don't object to that.
MR. KELLOGG: Well, I think that covers it.

Q. Now, as to the property marked "U. S. Government," what is that?

Mr. Kellogg: The question is withdrawn.

Cross-Examination.

By Mr. Baldwin:

Q. The extreme western portion of all the land of any kind or character, of the Saunders deed, is between Fifteenth and Sixteenth Streets, is it not?

A. Yes, sir, except one small piece, which is right in here. (Indicating Block 226).

Q. That is between Fifteenth and Sixteenth, isn't it?

A. Yes, sir.

Q. Then there are no other properties, lands or lots of any kind or character included in or covered by the Saunders deed west of that portion between Fifteenth and Sixteenth Streets?

A. No, sir, not that I know of.

Q. You say that the land east and south of the Union Pacific track is hilly and rough?

A. Yes, sir.

Q. You have so designated it on this map Exhibit 7?

A. Yes, sir.

Q. You purposely did that?

A. No, sir.

Q. Well, it was for the purpose of correctly showing the topography, was it not?

A. Yes, sir.

Q. And that was the object of the preparation of this map, was it not?

A. Yes, sir.

Q. And you so did that?

A. Yes, sir.

Q. You had that purpose in view?

A. Yes, sir.

Q. Does this map, Exhibit 7, show the territory south and east of the Union Pacific, and show any buildings?

A. No, sir, no buildings.

Q. Houses?

A. No, sir.

Q. Manufactories?

A. No, sir.

Q. Seminaries?
A. No, sir.
Q. Breweries?
A. No, sir.
Q. Nothing of that kind?
A. No, sir.
Q. It is all densely populated, is it not?
A. Yes, sir.
Q. Streets and alleys?
A. Yes, sir.
Q. Graded?
A. Largely.
Q. Practically all?
A. Yes, sir.
Q. Paved?
A. Well, more or less.
Q. Mr. Kountze's residence is in there?
A. Yes, sir.
Q. And Brownell Hall?
A. Yes, sir.
Q. Krug's brewery?
A. Yes, sir.
Q. Street car lines?
A. Yes, sir.
Q. Main street car line between Omaha and South Omaha?
A. Yes, sir.
Q. Main street car line down Tenth Street?
A. Yes, sir.
Q. Passing Kountze's place and Brownell Hall?
A. Yes, sir.
Q. There are other residences there?
A. Yes, sir.
Q. In all that territory, is that not correct?
A. Yes, sir.
Q. And business houses?
A. Small business houses, yes, sir.
Q. Business houses and stores?
A. Yes, sir.
Q. Opera houses and halls are there?
A. Yes, sir.
Q. And in fact it is just practically the same in tha

regard as any other part of town, any other portion of Omaha?

A. Yes, sir.

Q. In that part there is no difference?

A. No, sir.

Q. In these particulars there is no difference?

A. No, sir.

Q. You speak of an elevation of 245 feet—two elevations of 245 feet. What do you mean by that?

A. Two hundred and forty-five feet above the Missouri River.

Q. Low or high water mark?

A. Low water mark.

Q. Does this map, Exhibit 7, show the station of the Union Pacific?

A. No, sir.

Q. Does it show its locality? Can you indicate on the map the locality of the passenger station of the Union Pacific?

A. Very nearly.

Q. Please do so.

A. Just about in there. Tenth and Marcy Streets.

Q. What is that elevation?

A. Sixty-five feet.

Q. What is the bridge?

A. Nearly the same.

Q. What is the elevation at summit? Does the map show the Summit?

A. It is not complete quite to the Summit.

Q. Well, in the neighborhood of the Summit, what is the elevation?

A. Of the Union Pacific tracks?

Q. Yes, sir.

A. One hundred and seventy-two feet.

Q. Where is that elevation of 172 feet relative to the elevation of 195 feet that you spoke of?

A. Twenty-three feet below.

Q. Where, on this plat, did you designate the elevation of 195 feet, relative to the elevation of 172 feet of the Union Pacific. A short distance from there, is it not?

A. Yes, sir.

Q. Where is this elevation of 245 feet, indicate that to me on the map?

A. There is one there at Fifteenth and Arbor streets.

Q. What is the average elevation between Fifteenth and Arbor and the Union Pacific bridge. Your map will indicate that, won't it?

A. The map shows it, yes, sir.

Q. Well, what is the average?

A. Well, that would be quite hard to arrive at.

Q. Well, you have picked out the promontories—you were asked to give the promontories?

A. Yes, sir.

Q. Can you tell from the map, as an expert engineer, the average elevation, taking this elevation at Fifteenth and Arbor and the Union Pacific track across the bridge, or the station?

A. The average elevation might range between 120 and 150 feet, in that neighborhood.

Q. Now, how is it between Fifteenth and Arbor and the Boulevard, taking a southwesterly-northeasterly line?

A. Aside from some low places, it is nearly level.

Q. Now, what is the distance between the Boulevard and the Missouri River bridge?

A. Whereabouts on the Boulevard?

Q. Well, on a direct line. You are taking a direct line, aren't you?

A. Yes, sir.

Q. Well, on a direct line.

A. Well, it would be nearly ten thousand feet, nearly two miles.

Q. Your map does not indicate the topography to South Omaha from the point you have taken on the Boulevard?

A. No, sir.

Q. Do you know anything about the topography from there west?

A. Only in a general way.

Q. What is it, an average of this that you have been describing on this line between the bridge and the Boulevard?

A. Yes, sir; I think it is about an average.

RE-DIRECT EXAMINATION.

By Mr. Kellogg:

Q. Is that map a regular map that you have in your office, or was it made especially for this case?

A. It is the regular map that we have in our office.

Q. Now, Mr. Baldwin asked you about the settlement of the country—if I understood the location correctly—it was east and south of the Union Pacific tracks and between the bridge and South Omaha?

MR KELLOGG TO MR. BALDWIN: Was that the country you were asking him about?

MR. BALDWIN TO MR. KELLOGG: About the territory east and south of the Union Pacific line, taking as a base the bridge and boulevard.

MR. KELLOGG: Yes, that is what I understood.

MR. BALDWIN: That is the only part that was covered by this map.

Q. That country is all thickly populated, all over those hills is it?

A. Yes, sir.

Q. And how is the country most of the way on the other side, whether it is thickly settled or covered more or less by buildings?

A. It is thickly settled.

Q. Where is the wholesale business part of the City of Omaha, in relation to the tracks of the Union Pacific Railroad?

A. They lie north of the main line of tracks.

Q. Between what streets—between the river and what part running south (west)?

A. As far west as Sixteenth.

Q. Now, along and adjoining these tracks state whether there are or are not large business houses and blocks?

A. Yes, sir, there are large business houses.

Q. Beyond that point to the south what is the character of the country, as to being inhabited or otherwise?

A. Which side of the Union Pacific do you have reference to?

Q. North I am speaking of.

A. It is pretty well built up with the residence district. There are some industries distributed along down contiguous to the tracks.

Q. Can you describe the location of any of those industries?

A. The shot tower and lead works—

Q. Where is that situated?

A. On Seventeenth street, north of the Union Pacific tracks, possibly 200 feet, and in the block further west is a large boiler works.

At this point the witness was excused for the present and further taking of testimony was adjourned until 2 o'clock p. m.

2 o'clock p. m., April 21.

Met pursuant to ajournment, and further proceedings were as follows:

John C. Drexel, was called and duly sworn, as a witness on the part of complainants. Testified as follows:

DIRECT EXAMINATION.

By Judge McHugh:

Q. What is your official position, Mr. Drexel?

A. County Clerk of Douglas County, Nebraska.

Q. I will ask you to state whether, as County Clerk of Douglas County, you are the custodian of the contracts of the County, of the papers and records?

A. Yes, sir.

Q. You may state whether you have made search in your office for the contracts between the County of Douglas and the City of Omaha, and the Union Pacific Railroad Company, dated January 1, 1872?

A. I have.

Q. You may state whether or not you have been able to find that contract?

A. I have not found it.

Q. So far as you know, then, it is not in the papers of the County?

A. No, sir, it is not, so far as I know.

Cross-examination waived.

Witness excused.

John W. Fead called and sworn as a witness on the part of complainants. Testified as follows:

DIRECT EXAMINATION.

By Judge McHugh:

Q. What is your official position in Omaha, Mr. Fead?

A. Deputy City Treasurer.

Q. Of the City of Omaha?

A. Of the City of Omaha.

Q. You may state whether you have searched the office, the papers and files in the office of the City Treasurer of the City of Omaha for the contract between the City of Omaha, County of Douglas, and the Union Pacific Railroad Company, dated January 1, 1872?

A. I have.

Q. State whether you found it?

A. I did not.

Q. It is not among those papers?

A. No, sir.

Cross-examination waived.

Witness excused.

W. H. Elbourn, called and sworn as a witness on the part of the complainants. Testified as follows:

DIRECT EXAMINATION.

By Judge McHugh:

Q. Please give us your full name.

A. William Henry Elbourn.

Q. Your official position?

A. City Clerk of the City of Omaha.

Q. And as such, the custodian of the records of the city?

A. Yes, sir.

Q. You may state whether you have made search of the records of the City of Omaha, and the files of the City of Omaha, for the original contract between the City of Omaha and County of Douglas, and the Union Pacific Railway Company, bearing date, January 1, 1872?

A. Yes, sir.

Q. You may state whether or not you have been able to find such a contract?

A. I cannot find it.

Q. So far as you know, after search, it is not in the files?

A. No, sir.

Cross-examination waived.
Witness excused.

Geo. W. Craig is here recalled, as a witness on the part of complainants, for further re-direct examination, which was as follows:

By Mr. Kellogg:

Q. Plaintiff's Exhibit 4-a shows certain buildings and industries along the tracks of the Union Pacific Railroad in Omaha, does it not?

A. Yes, sir.

Q. Please state what buildings there are in block 203, facing Tenth Street?

A. The wholesale implement houses of the Avery Manufacturing Company, Northwall, and Sattley Manufacturing Company, and the Bushman warehouse.

Q. Do they reach above the viaduct?

A. They have approaches from the viaduct for foot passengers.

Q. Opposite that, or nearly opposite, in block 192?

A. They are also implement houses. Parlin, Orendorf & Martin.

Q. Any others in that block?

A. The Sattley Manufacturing Company, also. And the National Oil and Paint Company.

Q. Do you recall anything about those buildings?

A. Yes, sir.

Q. What are they?

A. The Sattley Manufacturing Company is a building of—I am almost positive it is a four story building, newly constructed in the last three or four years.

RE-DIRECT EXAMINATION—Continued.

By Judge McHugh:

Q. Take the industry in block 191, marked "John Deere Plow Company." Describe the character of the buildings.

A. It is a brick structure, four or five stories in height, newly constructed.

Q. What is the fact as to whether it covers the entire portion of that block, as outlined on this map?

A. It covers that portion of block 191 lying south of the Union Pacific.

Q. Take in block 190, how about the Pacific Hotel Company's property?

A. It is a small building; it is a two-story brick structure; covers part of the lot.

Q. I think I will not ask you specifically about each of these, but state generally the character of the buildings that are adjoining these lower tracks of the Union Pacific Railroad Company.

A. They are brick structures varying in height from three to five stories.

Q. And built solidly along the tracks?

A. Yes, sir; nearly so.

Q. And are of a solid, substantial and valuable character?

A. Yes, sir.

Witness excused.

W. S. King is here called and sworn as a witness on the part of the complainant. Testified as follows:

DIRECT EXAMINATION.

By Mr. Kellogg:

Q. State your full name?

A. W. S. King.

Q. What is your occupation?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. Twenty-two years.

Q. Were you ever in the employ of the Union Pacific Railway Company?

A. Yes, sir.

Q. For how long?

A. About seven or eight years.

Q. During what years?

A. From 1878 to 1887.

Q. With headquarters at Omaha?

A. Yes, sir.

Q. What position do you occupy now?

A. I am Chief Engineer of the Union Stock Yards Company at South Omaha.

Q. Referring to plaintiff's Exhibit 4-b, a map of the Union Pacific and other lines, showing the lines at South Omaha. Will you state what property at South Omaha is owned by the Union Stock Yards Company, and indicate it on this map?

MR. BALDWIN: We object to that as incompetent, irrelevant and immaterial. This objection is not meant to reach to the question of title. I admit that he is able to state in a general way the different properties.

MR. KELLOGG: The question is withdrawn.

Q. Mr. King, how long have you been in the employ of the Union Stock Yards Company?

A. Sixteen years.

Q. Since you left the Union Pacific Railway Company?

A. Yes, sir.

Q. State when the stock yards were first constructed there at South Omaha?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. The first work was done in 1884.

Q. When was the first packing house built there?

A. It was started that same summer.

Q. Who was that built by?

A. It was built by the Union Stock Yards Company and turned over to the Hammond Packing Company under a lease.

Q. Between that and the construction of the Armour Packing House, can you state about when the other packing houses were built?

A. The second packing house was a small slaughter house built by Thomas Lipton, in 1886, I think. I would not be positive, it may have been built in 1885, or early in 1886, and what was at that time known as the Fowler House, about the same time. The Lipton House was afterwards acquired by the Armour-Cudahy Packing Company, and rebuilt in 1888, and afterwards became the Cudahy Packing Company. The Fowler House was enlarged from time to time, and became what is now known as the Omaha Packing Company. The Swift House was started in 1887, and opened for business in 1888. What is now known as the Armour Company—the Armour Packing House was started in 1897 and finished in 1898.

Q. Mr. King, from the crossing of the Burlington road over the Union Pacific in the north part of South Omaha, until you get below the stock yards, is there any space there for the construction of railroad tracks not now covered by the railroad tracks or the property available for railroad tracks, owned by other companies?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. East or west of the Union Pacific or both?

Q. Both.

A. There could be a railroad line constructed east of the Union Pacific.

Q. Well, it would run right into the heart of the City of South Omaha, wouldn't it?

A. Yes, sir.

Q. Right into the business part of the city?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. It would strike some part of it.

Q. Now, take west of the Union Pacific tracks, is there any available land there?

MR. BALDWIN: Objects to this as incompetent, irrelevant and immaterial.

A. No, sir.

Q. Now, the stock yards are westwardly from the Union Pacific tracks, are they not?

A. Yes, sir.

Q. From the Burlington crossing to "I" Street, what is the nature of the country east of the tracks, high or level?

A. Well, it is rolling. Part of it is high and a part of it is on a level with the tracks, some of it a little lower —no, none of it lower—yes, there is some of it a little lower.

Q. Where is the business part of the City of South Omaha?

A. Well, the hub center is about Twenty-fourth and "N" Streets.

Q. How far north does it extend?

A. About to "J" Street.

Q. State whether the ground rises from the Union Pacific tracks east rapily or not, on the east?

A. Some places rapidly and other places not. In

that portion between "N" and "M" Streets it rises rapidly. "N" Street originally was an elevation that was on ordinarily a level with the railroad, but at this time it has been graded up until it rises with about a 5 per cent grade to Twenty-fourth street. Below "N" Street it rises rapidly again.

Q. Well along "C" "D" and "E" streets, how is that land eastwardly from the tracks, from the Union Pacific tracks?

A. At "C" and "D" streets it is below the Union Pacific tracks. At "E" it is considerably above.

Q. How is it at "F?"

A. At "F" "G" and "H" it is considerably above, and at "I" too.

Q. Do you know the height? Is it a high or ——

A. On what is known as Commercial street, just immediately east of the Union Pacific lot property, it ranges from nothing to about forty feet above the Union Pacific tracks.

Q. Well is it a feasible place to construct a railroad, east of the Union Pacific tracks, to reach the South Omaha stock yards. Is it practicable?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Well, it couldn't be done without crossing the Union Pacific tracks because all the stock yards tracks are west of the Union Pacific.

Q. Well, taking the situation of the city, the topography and everything else into consideration is it a practicable thing?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

No answer.

Q. I want to know whether, taking into consideration the topography of the city and the country here, whether it is a practicable thing to construct a railroad here from the Burlington crossing west of the Union Pacific without using the right of way of the Union Pacific lengthwise?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. For how far south?

Q. Why to a connection with the Union Stock Yards Company tracks?

A. Of course that is assuming that you can cross the Union Pacific, yes sir.

Q. Without using it lengthwise?

A. Yes, sir.

Q. Well, wouldn't it be very expensive?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. Well, is it practicable to construct a road from—do you mean that it is practicable to construct a line west of the Union Pacific right of way to a connection with the Union Stock Yards Company's tracks.

A. That is qualified by your question "without crossing some other railroad property?"

Q. Yes, sir.

A. It is not.

Q. Now what properties would you have to cross to do that?

A. The Burlington, and the Omaha Belt railway.

Q. Wouldn't you have to run lengthwise of their property to do that?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial, and for the further reason that it is leading and suggestive.

A. It would cross the Burlington, it would run quite a long distance on the Omaha Belt Railway proper. You could not call it "lengthwise" though, as it is a triangle and it would only run across one neck of that property, and on the stock yards property, that would be dependent on what point you connected it at.

Q. When I asked you if it would be feasible to build a line west of the Union Pacific tracks and you answered that it was, was that answer correct—did you understand it?

A. It was not. I thought you meant "east."

CROSS-EXAMINATION.

By Mr. Baldwin:

Q. Mr. King, you were asked with reference to the topography and of the contour of the surface of the prop-

erty east of the Union Pacific line and south and southwest of the Burlington crossing, were you not?

A. Yes, sir.

Q. Is it not a fact that there is quite a space of ground from the Burlington crossing to the station in South Omaha. That is practically on a level with the Union Pacific tracks?

A. That is the way I answered that question.

Q. Well, now, I know, but answer it again, please.

A. Yes, sir.

Q. Your attention was called to blocks 29, 30, 43, 44 and 56. Are they owned by the Union Pacific?

A. As I understand it, yes, sir.

Q. They are not occupied?

A. No, sir.

Q. There are no buildings of any kind or character of importance from the Burlington crossing southeast and east of the Union Pacific tracks to the station at South Omaha, are there, along the line?

A. No, sir.

Q. Say 100 to 200 feet until you get to the lumber yards?

A. Not until you get to the coal and lumber yards in block 57.

Q. Now assuming that any railroad that wants to get in there has a right to construct along there and, if necessary, to condemn those blocks owned by the Union Pacific, it would be very easy to build a line into South Omaha, would it not?

A. It would be a question of dollars and cents, that is all.

Q. It is a question of dollars and cents the building of any road, isn't it, that is your experience?

A. Yes, sir.

Q. But there is no city there, is there?

A. No, sir.

Q. Nor no buildings of any importance?

A. No, sir.

Q. And the grade is practically the same is it not—but very little rise?

A. Oh, no, there are high hills there.

Q. How far from the Union Pacific track?

A. At various distances. North of "F" street, oppo

site a part of block 29 and all of block 30, it is on a level with the Union Pacific tracks to back about 150 feet. Then it is hilly from there on.

Q. But there are practically no hills along in blocks 43 and 44, 56 and 57; and east of there you get into the town proper, don't you?

A. Yes, sir.

Q. Outside of the fact that they would have to make a cut there, it would be only a question of expense in the construction of a railroad there?

A. That is all.

Q. And then assuming that this proposed railroad would have the right to cross the Union Pacific to get to the stock yards—so far as the practicability of that solution of the question is concerned, that is so, is it not?

A. Yes, sir.

Q. Simply a question of dollars and cents?

A. Yes, sir.

Q. Now, take the west side. A road would only have to cross the Burlington and the Belt Line, wouldn't it, to get to the stock yards tracks—well, from the Burlington crossing?

A. From the Burlington crossing, yes sir.

Q. What does the Burlington have to cross to get to the stock yards tracks from the same point?

A. They cross the Belt Line.

Q. And the Northwestern?

A. Elkhorn and stock yards join at that point, yes.

Q. I am not talking now about whether it is an overhead crossing or a subway, but the Burlington crosses the Union Pacific, the Belt Line, the Elkhorn or Northwestern to get to the South Omaha stock yards does it not?

A. Yes sir.

Q. Now assuming that any proposed railroad would procure the legal right to cross these railroad tracks it is practicable to build a railroad from that point to the stock yards tracks is it not?

A. Yes.

Mr. Kellogg: The legal right to cross the railroad tracks only, or the railroad property?

Mr. Baldwin: Well railroad tracks and railroad property.

Q. What are there, if any, in the way of buildings on block 67 in South Omaha?

A. A planing mill.

Q. Indicate on this plat, if you please, the Union Stock Yards tracks?

A. They lie immediately west of the Union Pacific.

Q. And extend to what point, Mr. King?

A. On the north to the Burlington tracks, the Burlington tracks being underneath their bridge.

Q. And also this is a part of it (indicating on the map)?

A. Yes, sir.

Q. And this, too (indicating on the map)?

A. Yes, sir.

Q. Your tracks also go up to the point indicated on the plat as sub-lot 4 of lot 10, section 33?

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. Kellogg:

Q. You said there was a planing mill in block 67?

A. Yes, sir.

Q. What is there in the little three-cornered block next to it?

A. I believe there is a feed dealer and coal dealer. Something of that kind.

Q. What is there in block 75?

A. That is a coal and feed dealer.

Q. Railroad tracks leading to it?

A. Yes, sir, and also a warehouse of one of the breweries.

Q. South of that where does the city proper commence, the business part of the city, buildings, in what blocks?

A. On lot 6, in block 75, there is a hotel, and on the rest of the east half of that block there are located dwellings and business houses.

Q. Block 67, is that built up also?

A. On the east half of it it is, and some on the west.

Q. Block 66, is that built up?

A. Yes, sir.

Q. Is it substantially all built up from the depot clear to the Burlington crossing?

A. Not along the right of way.
Q. What do you mean by that?
A. Along this street (indicating on the map).
Q. But along Commercial Street, is it built up?
A. East of Commercial Street it is built up.
Q. A part of the City of South Omaha?
A. Yes, sir.
Q. Then when you say that you could build a road through there, you mean that you could with proper expense——

MR. KELLOGG: Question is withdrawn.

Q. When you say that you could build a road there, you mean that it could be done by spending money on it do you?

A. When I said that I answered Mr. Baldwin's question of building it on the lots belonging to the Union Pacific. It would be a very great expense to do it. It could be done on Commercial Street or a little east of it.

Q. Even that would be very expensive, wouldn't it?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Yes, sir.

Witness excused.

Harry G. Unverzagt is here called and sworn as a witness on the part of the complainants. Testified as follows:

DIRECT EXAMINATION.

By Judge McHugh:

Q. What is your business, Mr. Unverzagt?
A. Photographer.
Q. You are in business here in Omaha?
A. Yes, sir.
Q. I will ask you to state whether you took some photographs of the tracks of the Union Pacific Railroad Company in Omaha, recently?
A. I did, sir; yes, sir.
Q. When were they taken?
A. During the month of January.
Q. What year?
A. This year.

Q. I will show you plaintiff's Exhibit 9, and ask you to state whether that is one of the photographs you took?

A. Yes, sir.

Q. Where was that taken from?

A. It was taken from the Tenth Street viaduct.

Q. Looking in what direction?

A. Looking towards the river, east.

Q. The bridge that is shown in that picture, is what bridge?

A. That bridge is the Union Pacific bridge, the Union Pacific bridge across the Missour River.

Q. And what is that building shown in the picture, the large building. Do you know what that is?

A. Immediately in front here?

Q. Yes.

A. The large brick building I know.

Q. What is that?

A. That is the Lininger & Metcalf warehouse.

Q. That is a correct photograph of the situation there?

A. Yes, sir.

JUDGE MCHUGH: I now offer in evidence this photograph referred to, marked plaintiff's Exhibit 9.

CROSS-EXAMINATION.

By Mr. Baldwin:

Q. Where was your camera stationed?

A. On the footway of the Tenth Street viaduct, on the right side of the bridge.

Q. About how far east of the Union Station?

A. South.

Q. Your camera was east of the Union Station?

A. Practically on a line with the sidewalk of the Union Station.

Q. At the east end of the station?

A. At the west end of the station.

Q. Well then, relative to the Union Station?

A. Relatively on a line between the front of the Union Station and the Burlington Station, being on that viaduct.

Q. These are the freight tracks that you show here?

A. Indeed, I don't know about that.

Q. You know where the Union Station is?
A. Yes, sir.
Q. And you know the Union Station tracks are north of that (indicating the tracks on the photograph)?
A. Yes, sir.
Q. This shows the freight tracks then?
A. Yes, sir.

RE-DIRECT EXAMINATION.

By Judge McHugh:

Q. I now hand you plaintiff's Exhibit 10, and ask you to state whether that is one of the photographs that you took of the situation?
A. Yes, sir.
Q. Where was that taken from?
A. This picture was taken from the west end of the platform of the Union Depot—or rather the east end of the station platform—of the Union Station, at the extreme east end, at the Express Company's warehouse and office.
Q. And the bridge that is in the background?
A. It is the bridge across the Missouri River.
Q. The same one that appears in the other?
A. Yes, sir.
Q. And those are what tracks?
A. Those are the tracks out of the passenger depot.
Q. The tracks running out of the Union Depot?
A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Baldwin:

Q. Where was your camera stationed when you took this picture, Exhibit 10?
A. I was on the east end of the Union Depot platform. The picture was made from the top of a truck.

RE-DIRECT EXAMINATION.

By Judge McHugh:

Q. I now hand you Exhibit 11, and ask you if that is one of the pictures that you took as mentioned?

A. Yes, sir, that is one of the pictures.

Q. From where was that picture taken?

A. That picture was taken from a little balcony or porch of—I think it is the Burlington Hotel. It stands at the corner of Mason and Eleventh Streets?

Q. And the camera was facing east?

A. East, yes, sir.

Q. And the background is the Union Pacific Railroad Bridge across the Missouri River.

A. Yes, sir.

Q. That correctly represents that view?

A. Yes, sir.

JUDGE MCHUGH: I now offer in evidence plaintiffs Exhibits 10 and 11, being the photographs just identified by the witness.

Q. I now hand you Exhibit 12 and ask you to state whether that is one of the pictures that you took as you mentioned?

A. Yes, sir.

Q. Where was that picture taken from?

A. That was taken from the roof of the warehouse of the McCord, Brady Company, at the corner of Thirteenth and Leavenworth Streets.

Q. What building is that that shows through here, and this building that shows up over the Bushman storage warehouse is what building?

A. That is the Union Pacific Depot.

Q. And that bridge to the left of the Avery building?

A. That is the Union Pacific bridge across the Missouri River.

Q. And this building with the front upon the viaduct?

A. That is the Deere Plow building—the John Deere Plow Company, the sign is upon the building.

Q. That is a correct photograph of the view?

A. That is a photograph of the actual situation and appearance.

Q. Calling your attention to Exhibit 12: These tracks shown in the foreground of the picture, and running by the John Deere Plow Company building, is the lower track of the Union Pacific Railroad Company?

A. I think so. I do not know the name of the company that owns those tracks, but they are the tracks north of the Union Pacific tracks on the street level, running up Leavenworth Street and crossing Thirteenth Street.

Q. Those are the lower tracks?

A. Yes, sir.

JUDGE McHUGH: I offer in evidence plaintiff's Exhibit 12, being the photograph just identified by the witness.

Q. Handing you Exhibit 13. I will ask you if that is one of the pictures you took?

A. Yes, sir.

Q. Where did you take that from?

A. That picture was made from the Sixteenth Street viaduct, looking east.

Q. What is this building a little to the right of the center?

A. That is the Union Pacific Depot.

Q. Where is the Burlington Depot? Does it show?

A. No, the Burlington Depot is behind. You can just see the point of the facade.

Q. To the right of the Union Pacific Depot?

A. Yes, sir.

Q. And this track that is shown in the foreground is the lower track that you have shown more particularly in the photograph, Exhibit 12?

A. Yes, sir.

Q. This is just as the negative took the picture and is correct?

A. Yes sir.

JUDGE McHUGH: I now offer in evidence Exhibit 13, being the photograph just identified by the witness.

JUDGE BALDWIN: Defendants now object to the introduction in evidence to each and every of these Exhibits 9, 10, 11, 12, and 13, respectively, for the reason that the same are incompetent, irrelevant, and immaterial.

Witness excused.

George W. Roberts is here called and sworn as a witness on the part of complainants. Testified as follows:

DIRECT EXAMINATION.

By Mr. Kellogg:

Q. State your full name please?

A. George W. Roberts.

Q. What is your business?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. I have worked at it since 1888.

Q. Are you in the employ of the city?

A. I am.

Q. Did you take the levels of the embankment of the Union Pacific Railroad east of the bridge, and between that and the transfer station?

A. I did.

Q. Can you give them at various places along between those points?

A. Yes, sir.

Q. Did you actually measure the height of the embankment from the east end of the bridge to the Union Pacific transfer station?

A. Yes, sir.

Q. At what distances did you take the levels?

A. Three hundred feet.

Q. At the east end of the bridge what is the height of the embankment above the natural level of the ground?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

A. Approximately 50 feet.

Q. Please give the height each 500 feet east of there until you reach the west side of the Union Pacific Transfer station.

MR. BALDWIN: I object to this as incompetent, irrelevant and immaterial.

A. The east end of the bridge is approximately fifty feet, 500 feet east approximately the same; 1000 feet east it is forty-five feet; 1500 feet east it is forty-one feet; 2000 feet east it is thirty-eight feet; 2500 feet east it is thirty-four feet; 3000 feet east it is thirty-two feet; 3500 feet east it is thirty-two feet; 4000 feet east it is thirty feet; 4500 feet east it is twenty feet; 5000 feet east it is twenty feet; 5500 feet east it is seventeen feet; 6000 feet east it is practically fifteen feet; 6500 feet east it is twelve feet;

7000 feet east it is nine feet; 7500 feet east it is seven feet; 8000 feet east it is six feet; 8500 feet east it is four feet; 9000 feet east it is three feet; 9500 feet east it is practically one foot; 10,000 feet east it is practically one foot; 10,500 feet east it is practically one foot; 10,800 feet east it is practically one foot.

Q. The station grounds commence about how far east of the bridge?

A. I can tell you that if I can look at this (indicating a memorandum).

Q. Yes, certainly.

A. 7725 feet.

Witness excused.

JUDGE MCHUGH: We now offer in evidence a certified copy of the Articles of Incorporation of the Mason City and Fort Dodge Railroad Company, together with the Resolution of the Board of Directors of said company, filed in the office of the Secretary of State of the State of Nebraska, January 13, 1903, and recorded in book "E" Railroad Corporations at page 1.

MR. BALDWIN: I object to this as incompetent, irrelevant and immaterial, the objection not reaching to the fact that the original is not offered.

The certified copy of the Articles of Incorporation, etc., as above offered, being read in evidence, are as follows:

G. W. Marsh,
Secretary of State.

Frank McCartney,
Deputy.

UNITED STATES OF AMERICA,

STATE OF NEBRASKA.

I, GEO. W. MARSH, Secretary of State, of the State of Nebraska, do hereby certify that the within is a full, true and correct copy of the Articles of Incorporation of "THE MASON CITY AND FORT DODGE RAILROAD COMPANY," together with RESOLUTION of the Board of Directors of said Company, as filed in this office, January 13, A. D. 1903, and recorded in book "E," Railroad Corporations, at page 1.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the great seal of the State of Nebraska. Done

at Lincoln, this 7th day of April, in the year of our Lord One Thousand Nine Hundred and Three, of the independence of the United States, the One Hundred and Twenty-seventh, and of this State, the Thirty-sixth.

Geo. W. Marsh,
Secretary of State.
[SEAL] By Fred. W. Miller,
Deputy.

THE STATE OF IOWA.

SECRETARY OF STATE.

I, W. B. Martin, Secretary of State of the State of Iowa, do hereby certify that the attached instrument of writing is a true and correct copy of Articles of Incorporation and Amendments Thereto of the Mason City and Fort Dodge Railroad Company as the same appears of record in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Secretary of State of the State of Iowa.

Done at Des Moines, the Capital of the State, December 16, 1902.

W. B. Martin,
Secretary of State.
[SEAL] By D. A. Hites,
Deputy.

ARTICLES OF INCORPORATION

of the

MASON CITY AND FORT DODGE R. R. CO.

ARTICLE 1ST.

And associates, form themselves into a corporation under the name and style of "The Mason City and Fort Dodge Railroad Company" with full power under said incorporation to have perpetual succession; to sue, and be sued by its corporate name; to have a common seal, which it may alter at pleasure; to render the interests of the stockholders transferrable; to make contracts, acquire, dispose of and transfer property, real and personal; possessing the same power in such respects as private individuals enjoy; to establish by-laws, and make all rules and

regulations deemed expedient for the management of its affairs in accordance with law; to construct, own and operate, lease, mortgage, furnish trackage for other rail road companies, purchase trackage from other rail road companies; and do all other acts which a rail road company in the State of Iowa may lawfully do, and have all powers which a rail road company may have under the State of Iowa.

ARTICLE 2ND.

The object of said corporation is to construct, maintain and operate a rail road between the cities of Mason City, in the County of Cerro Gordo, and Fort Dodge in the County of Webster, in the State of Iowa, with such lateral branches and such extensions beyond each and every of said points as the board of directors of said corporation may determine upon and designate and the law permit.

ARTICLE 3RD.

This corporation shall commence May 23rd, 1881, and continue fifty years, with right of removal from time to time as provided by law, and so as to have perpetual succession.

ARTICLE 4TH.

The capital stock of this corporation shall be five million of dollars (5,000,000.) in shares of one hundred dollars each, the same to be called in as the board of directors may order and the indebtedness shall not at any time exceed three million (3,000,000.) dollars.

ARTICLE 5TH.

The affairs of this corporation shall be managed by thirteen directors, all of whom shall be stockholders, and who shall be elected annually on the third Tuesday in May of each year, by the stockholders in person or by written proxy. The first election shall be held on the third Tuesday in May, 1883, to which time, the following named persons shall constitute the board of directors. Wm. R. Miller, T. G. Emsley, Geo. L. Herrick, H. J. Smith, W. V. Lucas, J. F. Duncombe, W. E. Duncombe, A. McBane, Wm. M. Grant, J. M. Mulrony, L. Blandon,

Geo. A. McKay, G. G. Pritchard and hold their offices until their successors are elected, and any vacancy in the board shall be filled by a majority of the directors, whether in person, or represented by written proxy, shall constitute a quorum for the transaction of any business of the company.

ARTICLE 6TH.

The board of directors shall elect from their number a president and vice-president, who shall have such power as may be given by law, or fixed by the by-laws of said corporation, and the board of directors shall appoint a secretary and treasurer and such other officers and agents as they may deem necessary; all of whom shall be under the control of the board of directors, and the board of directors may require any officer or agent to give security for the faithful performance of his duty.

ARTICLE 7TH.

The track of said road shall be of the standard gauge, or such gauge as the board of directors may designate, not less than three feet in width.

ARTICLE 8TH.

The private property of the stockholders of this corporation shall be exempt from the payment of the corporate debts.

ARTICLE 9TH.

The principal place of business shall be Fort Dodge, Iowa, but the board of directors may, from time to time temporarily change the place of business to suit the convenience of said company, or of the said directors; and meetings of said board or of the stockholders of said corporation held, as shall be provided in the by-laws or by order of the board of directors at any time to suit the convenience of said corporation and its board of directors, or at any place in the state of Iowa, shall be as legal and binding upon the stockholders, bondholders and creditors of said corporation, and all other persons, as if held in the city of Fort Dodge, but in such case, each director shall have written notice of the time and place of the meeting.

Signed this 23rd day of May, 1881.

Geo. A. McKay,
G. G. Pritchard,
W. E. Duncombe,
J. F. Duncombe,
A. McBane,
J. M. Mulroney,
Wm. M. Grant,
L. Blandon,
Geo. R. Miller,
T. G. Emsley,
Geo. L. Herrick,
H. I. Smith,

W. V. Lucas.

State of Iowa,
Cerro Gordo County, } ss.

Be it remembered that on the 27th day of May, 1881, before the undersigned, a notary public in and for said county and state personally appeared Geo. R. Miller, T. G. Emsley, Geo. L. Herrick and H. S. Smith, to me severally and personally known to be the identical persons whose names are affixed to the foregoing instrument, and who severally acknowledged the same to be their voluntary act and deed.

Witness my hand and official seal the day and year last above written.

[SEAL]

James Rule,
Notary Public.

State of Iowa,
Polk Co., } ss.

Be it remembered that on this 28th day of May, 1881, before the undersigned Clerk of the Supreme Court in and for the State of Iowa personally appeared W. V. Lucas to me personally known to be the identical person whose name is attached to the foregoing instrument and acknowledged the same to be his voluntary act and deed.

[SEAL]

E. J. Holmes,
Clerk Supreme Court of Iowa.

State of Iowa,
Wright County, } ss.

Be it remembered, that on the 3rd day of June, 1881, before the undersigned, a notary public, in and for said county and state personally appeared Geo. A. McKay and G. G. Pritchard to me, severally and personally to me known to be the identical persons whose names are affixed

to the foregoing instrument, and who severally acknowledged the same to be their voluntary act and deed.

Witness my hand and official seal the day and year last above written.

[SEAL]

John L. Morse,
Notary Public.

State of Iowa, } ss.
Webster County. }

Be it remembered, that on the 1st day of June, 1881, before the undersigned, a notary public, in and for said county and state, personally appeared J. F. Duncombe, A. McBane, J. M. Mulrony, Wm. M. Grant, L. Blandon, W. E. Duncombe to me severally and personally to me known to be the identical persons whose names are affixed to the foregoing instrument, and who severally acknowledged the same to be their voluntary act and deed.

Witness my hand and official seal the day and year last above written.

[SEAL]

R. S. Gray,
Notary Public.

Webster County, Ia.

Filed for record this 8th day of June, A. D. 1881, at 10 o'clock A. M. and recorded in book No. 1 of Miscellaneous, page 255.

John Breen, Jr.,
Recorder.

State of Iowa, ss.

Filed for record in office of the Secretary of State, June 10th, 1881.

J. A. T. Hull,
Secretary of State.

### Stockholders Meeting.

At a meeting of the stockholders of the Mason City and Fort Dodge Railroad Company held at their office in the City of Fort Dodge, Iowa, at 8:30 o'clock A. M., October 19th, 1885, pursuant to call by the President of the Company, and at the request of the stockholders for the purpose of amending Article 5 of the Articles of Incorporation, and to transact such other business as might come before it. There was present J. F. Duncombe, and

by proxy, George R. Pearsons, J. H. Pearsons, William Grant, W. S. Duncombe, J. M. Mulroney, A. McBane, L. Blandon, G. A. McCay, T. J. Emsley, W. V. Lucas, G. R. Miller and A. J. Smith, being all of the stockholders of the company.

The meeting was called to order by the president J. F. Duncombe and J. B. Williams, Secretary of the company, being present.

It was moved and seconded, that section 5, of the Articles of Incorporation, be amended, so as to read as follows:—

Article 5. The affairs of the corporation shall be managed by five directors, all of whom shall be stockholders, and who shall be elected annually on the third Tuesday in May, of each year, by the stockholders in person or by written proxy, and hold their offices until their successors are elected, and any vacancy in the board shall be filled by a majority of the Directors, remaining in the Board, and a majority of the Directors, whether in person or represented by written proxy shall constitute a quorum for the transaction of any business of the company.

The motion was carried by a unanimous vote.

And it was further moved and seconded, that the Article as Amended be executed by the President and Secretary of the stockholders meeting, and recorded and published as provided by law.

The motion was carried.

There being no further business before the meeting, it was moved and seconded, that the meeting be adjourned. Carried.

James B. Williams,
Secretary.

John F. Duncombe,
President.

In accordance with the above proceedings of the stockholders meeting of the Mason City and Fort Dodge Railroad Company, Article 5, of the Articles of Incorporation is as follows:—

ARTICLES OF INCORPORATION
MASON CITY AND FORT DODGE RAILROAD COMPANY.

ARTICLE 5.

The affairs of this corporation shall be managed by

five directors all of whom shall be stockholders and who shall be elected annually on the third Tuesday of May of each year by the stockholders in person, or by written proxy, and hold their offices until their successors are elected, and any vacancy in the Board shall be filled by the majority of the Directors remaining in the Board and a majority of the Directors whether in person, or represented by written proxy shall constitute a quorum for the transaction of any business of the company.

James B. Williams,
Secretary of Stockholders meeting.

John F. Duncombe,
President of stockholders meeting.

[CORPORATE SEAL.]

State of Iowa, } ss.
Webster County. }

Be it remembered that on the 19th day of October, A. D. 1885, before the undersigned David J. Haire, a notary public in and for said county, came John F. Duncombe, J. B. Williams, to me personally to be the identical persons whose names are subscribed to the foregoing instrument, and acknowledged the same to be the full and voluntary act of said company and of said John F. Duncombe as President of said company, and J. B. Williams as Secretary of said company, and that they executed the same for the purposes herein mentioned.

Witness my hand, and notarial seal, the day and year above written.

David J. Haire,
Notary Public,
Webster County, Ia.

[SEAL]
Webster Co., Iowa.

Filed for record this 19th day of October, A. D. 1885, at 9 o'clock a. m. and recorded in Book 2 of Miscellaneous Record on page 48.

G. H. Porter,
Recorder.

Fees 1.00 paid.

State of Iowa, ss.

Filed for record in office of Secretary of State Jan. 7, A. D. 1886, and recorded in book T page 274.

Frank D. Jackson,
Secretary of State.

Fee $1.00 pd.

Extracts from minutes of the adjourned annual meeting of stockholders of The Mason City and Fort Dodge Railroad Company, held pursuant to adjournment at the Company's office in the "Duncombe House" at Fort Dodge, Iowa, on Wednesday, May twenty-second, 1889, at 9 a. m., at which a majority of the issued capital stock of the company was duly represented:

"Resolved: That Article Ninth (9th) of the Articles of Incorporation be amended so as to read as follows:"

"Article 9th. The principal place of business of said corporation shall be at Fort Dodge, Iowa, but the Board of Directors may from time to time temporarily change such place of business to suit the convenience of said company or of the said Directors' meetings of the stockholders of said corporation may be held at such time and place within the State of Iowa as may be provided in the by-laws and meetings of the Board of Directors may be held at such time and place within or without said State as may be provided by the by-laws of said corporation, or by resolution of the Board of Directors, notice of any meeting of the stockholders or Board of Directors may be given by mailing in the case of a Directors' meeting to each Director and in the same of a stockholders' meeting to each stockholder a notice in writing stating the time and place of such meeting directed to the last known place of residence of the Director or stockholder so notified a sufficient time before the date named for such meeting to afford opportunity by the ordinary course of mail for such notice to reach its destination and the person so notified by the ordinary course of travel between such place of residence and the place of meeting to be present at such meeting. Notice of such meetings may also be given by a publication thereof in any newspaper published at the principal place of business of said coporation, for a period of at least two weeks prior to the day named for such meeting. And notice of any meeting

of Directors or stockholders given in either manner shall be deemed sufficient."

"Which resolution, on motion, duly seconded, was carried unanimously."

"It was further moved and seconded that the article as amended be executed by the President and Secretary of this Company, and that it be recorded and published as provided by law."

"Carried unanimously."

William A. Stevens, Secretary pro tem. Hamilton Brown, Chairman.

In accordance with the above proceedings at the said Stockholders' meeting of the Mason City and Fort Dodge Railroad Company, Article nine (9) of the Articles of Incorporation is as follows:

ARTICLES OF INCORPORATION.

THE MASON CITY AND FORT DODGE RAILROAD COMPANY.

"Article 9th. The principal place of business of said corporation shall be at Fort Dodge, Iowa, but the Board of Directors may from time to time temporarily change such place of business to suit the convenience of said company, or of the said directors—Meetings of the stockholders of said corporation may be held at such time and place within the State of Iowa as may be provided in the by-laws, and meetings of the Board of Directors may be held at such time and place within or without said State, as may be provided by the by-laws of said corporation, or by resolution of the Board of Directors. Notice of any meeting of the stockholders or Board of Directors may be given by mailing in the case of a Directors' meeting to each Director, and in the case of a stockholders' meeting, to each stockholder—a notice in writing, stating the time and place of such meeting, directed to the last known place of residence of the director or stockholder so notified a sufficient time before the date named for such meeting to afford opportunity by the ordinary course of mail for such notice to reach its destination and the person so notified by the ordinary course of travel between such place of residence and the place of meeting to be present at such meeting. Notice of such meetings may also be given by publication thereof in any newspaper published at the

principal place of business of said corporation, for a period of at least two weeks prior to the day named for such meeting. And notice of any meeting of Directors or stockholders given in either manner shall be deemed sufficient."

William A. Stephens,
President of The Mason City and Fort Dodge Railroad Company.

S. T. Meservey,
Secretary of The Mason City and Fort Dodge Railroad Company.

State of Minnesota, } ss.
County of Ramsey, }

Be it remembered that on this seventeenth day of July, A. D. 1899, before the undersigned E. T. Stevenson, a notary public in and for said county, came William A. Stephens, to me personally known to be the identical person whose name is subscribed to the foregoing instrument and he acknowledged the same to be the full and voluntary act of said The Mason City and Fort Dodge Railroad Company, and of said William A. Stephens as President of said Company; and that he executed the same by authority of the stockholders of said company for the purposes therein mentioned.

Witness my hand and notarial seal the day and year in this certificate written.

E. T. Stevenson,
[SEAL] Notary Public,
Ramsey County, Minnesota.

State of Iowa, } ss.
County of Webster, }

Be it remembered that on this 25th day of July, A. D. 1899, before the undersigned Leon Vincent a notary public in and for said County came S. T. Meservey, to me personally known to be the identical person whose name is subscribed to the foregoing instrument and he acknowledged the same to be the full and voluntary act of said The Mason City and Fort Dodge Railroad Company and of said S. T. Meservey as Secretary of said Company; and that he executed the same by authority of the stockholders of said company for the purposes therein mentioned.

Witness my hand and notarial seal the day and year in this certificate written.

Leon Vincent,
Notary Public
Webster County, Iowa.

[SEAL]

State of Iowa, } ss.
Webster County. }

Filed for record the 31st day of July A. D. 1889, at 5 o'clock P. M. and recorded in book 2, page 486.

F. W. Kruckman,
Recorder.

State of Iowa, ss.

Filed for record in Office of Secretary of State, August 20th A. D. 1889, and recorded in book A-2, page 115.

Frank D. Jackson,
Secretary of State
By C. S. Byrkit,
Deputy.

(Fee $1.50)

Extracts from minutes of the adjourned annual meeting of stockholders of The Mason City and Fort Dodge Railroad Company, held pursuant to adjournment, at the Company's office in the "Duncombe House" at Fort Dodge, Iowa, on Wednesday May twenty-second, 1889, at 9, A. M. at which a majority of the issued capital stock of the Company was duly represented:—

"Resolved: That Section VIII of the by-laws of this corporation be amended so as to read as follows:

"VIII. The president or a majority of the Board of Directors may at any time call a meeting of the stockholders to be held at any point within the state of Iowa, and may in like manner call a meeting of the Board of Directors to be held at any place within or without said State:—Notice of any meeting of the Board of Directors or of the stockholders may be given by mailing—in the case of a stockholders meeting to each stockholders and in the case of a meeting of the Board of Directors to each Director—, a notice in writing stating the time and place of such meeting directed to the last known place of residence of such director or stockholder so notified, such notice to be so mailed a sufficient time prior to the date named for such meeting to afford opportunity for the same by the ordinary course of mail to reach its destination and the person

so notified by the ordinary course of travel between such place of residence and the place of meeting to be present at such meeting—Notice of any such meeting may also be given by a publication thereof in any newspaper published at the principal place of business of said corporation for a period of at least two weeks prior to the date named for such meeting—And notice of any Directors or stockholders meeting so given by mail or publication shall be deemed sufficient."

"On motion duly seconded it was carried unanimously."

"It was further moved and seconded that a copy of the amended section of the by-laws duly executed be recorded as provided by law, and another copy posted in the company's office as called for by the statute."

"Carried unanimously."

Hamilton Browne,
Chairman.

William A. Stephens,
Secretary pro tem.

In accordance with the above proceedings at the said meeting of stockholders of The Mason City and Fort Dodge Railroad Company, section eight (8) of the by-laws of said corporation is as follows—

"The Mason City and Fort Dodge Railroad Company."

"By-Laws."

VIII. The President or a majority of the board of directors may at any time call a meeting of the stockholders to be held at any point within the state of Iowa; and may in like manner call a meeting of the Board of Directors to be held at any place within or without said State, notice of any meeting of the Board of Directors or of the stockholders may be given by mailing—in the case of a stockholders' meeting to each stockholder and in the case of a meeting of the Board of Directors to each Director—a notice in writing stating the time and place of such meeting directed to the last known place of residence of such Director or stockholder so notified, such notice to be so mailed a sufficient time prior to the date named for such meeting to afford opportunity for the same by the ordinary course of mail to reach its desti-

nation and the person so notified, by the ordinary course of travel between such place of residence and the place of meeting to be present at such meeting. Notice of any such meeting may also be given by a publication thereof in any newspaper published at the principal place of business of said corporation for a period of at least two weeks prior to the date named for such meeting—And notice of any directors or stockholders meeting so given by mail or publication shall be deemed sufficient.

William A. Stephens,
President of The Mason City and Fort Dodge Railroad Company.

S. T. Meservey,
Secretary of The Mason City and Fort Dodge Railroad Company.

State of Minnesota, } ss.
County of Ramsey. }

Be it remembered that on this seventeenth day of July, A. D. 1889, before me the undersigned E. T. Stevenson a notary public in and for said county came William A. Stephens to me personally known to be the identical person whose name is subscribed to the foregoing instrument and acknowledged the same to be the full and voluntary act of said The Mason City and Fort Dodge Railroad Company and of said William A. Stephens, as president of said Company; and that he executed the same for the purposes therein mentioned.

Witness my hand and notarial seal the day and year above written.

[SEAL]

E. T. Stevenson,
Notary Public,
Ramsey County, Minnesota.

State of Iowa, } ss.
Webster County, }

Be it remembered that on this 25th day of July, A.D. 1889, before the undersigned, Leon Vincent, a notary public, in and for said county came S. T. Meservey, to me personally known to be the identical person whose name is subscribed to the foregoing instrument and he acknowledged the same to be the full and voluntary act of said The Mason City and Fort Dodge Railroad Company and of

the said S. T. Meservey as Secretary of said Company; and that he executed the same for the purposes therein mentioned.

Witness my hand and notarial seal the day and year above written.

Leon Vincent,
Notary Public,
Webster County, Iowa.

[SEAL]

State of Iowa, }
Webster County, } ss.

Filed for Record the 31st day of July, A. D. 1889, at 5 o'clock P. M. and recorded in book 2, page 489.

F. W. Kruckman,
Recorder.

State of Iowa, ss.

Filed for record in Office of Secretary of State, August 20th, A. D. 1889, and recorded in book A–2, page 118.

Frank D. Jackson,
Secretary of State.
By C. S. Byrkit,
Deputy.

(Fee, $1.25.)

Extract from the minutes of the special meeting of Stockholders of the Mason City and Fort Dodge Railroad Company, duly held at the office of said Railroad Company in Fort Dodge, Webster County, Iowa, on the 19th day of February, A. D. 1891, at ten o'clock in the forenoon of said day pursuant to notice duly given, at which a majority of the capital stock of said company issued and outstanding was duly represented.

The President, William A. Stephens, was called to the chair. The Secretary S. T. Meservey being present.

It was moved and seconded that Article 2nd of the Articles of Incorporation of this Company be, and the same is hereby amended so as to read as follows:

"Article 2nd: The object of said corporation is to construct, maintain and operate a railroad extending from Mason City in the County of Cero Gordo, in the State of Iowa, to Fort Dodge in the County of Webster in said State, thence to Lehigh in said County of Webster, and

thence from a point on its line at or near said Lehigh in a southwesterly direction to the City of Council Bluffs in the County of Pottawattamie in said state of Iowa; with such lateral branches from any point on its said line, and such extensions beyond each and every of said points as the Board of Directors of said Corporation may determine upon and designate, and the law permit.

"The entire amount of stock represented at the meeting namely fifty-seven hundred and forty-eight (5748) shares having been voted in the affirmative, said motion was declared carried unanimously."

"It was further moved and seconded that said Article 2nd as amended be forthwith executed and acknowledged by the President and Secretary of this company and that it be recorded and published as provided by law. Carried unanimously."

William A. Stephens,
Chairman.

S. T. Meservey,
Secretary.

[SEAL]

In accordance with the above proceedings at the said stockholders meeting of the Mason City and Fort Dodge Railroad Company, Article 2nd of the Articles of Incorporation is as follows:

ARTICLES OF INCORPORATION.

The Mason City and Fort Dodge Railroad Company.

Article 2nd: The object of said corporation is to construct, maintain and operate, a railroad extending from Mason City in the County of Cero Gordo in the state of Iowa, to Fort Dodge in the county of Webster in said State, thence to Lehigh, in said county of Webster, and thence from a point on its line at or near said Lehigh, in a southwesterly direction to the City of Council Bluffs, in the county of Pottawattamie, in said State of Iowa, with such lateral branches from any point on its said line, and such extensions beyond each and every of said points, as the Board of Directors of said Corporation may determine upon and designated, and the law permit.

William A. Stephens,
President of the Mason City and Fort Dodge Railroad Company.

S. T. Meservey,
Secretary of the Mason City and Fort Dodge
[SEAL] Railroad Company.

State of Iowa, }
County of Webster. } ss.

Be it remembered that on this nineteenth (19) day of February, A. D., 1891, before the undersigned, W. M. Healy, a notary public in and for said County, came William A. Stephens and S. T. Meservey, to me personally known to be the identical persons whose names are subscribed to the foregoing instrument, and they acknowledged the same to be the full and voluntary act of said The Mason City and Fort Dodge Railroad Company, and of said William A. Stephens as President of said Company, and of said S. T. Meservey, as Secretary of said Company, and that they executed the same by authority of the stockholders of said company for the purposes therein mentioned.

Witness my hand and notarial seal the day and year in this certificate written.

W. M. Healy,
Notary Public in and for Webster County, State of Iowa.
[SEAL]

State of Iowa, }
Webster County. } ss.

Filed for record the 19 day of Feby. A. D., 1891, at 12 o'clock M., and recorded in book 2, page 624.

D. A. Peterson,
Recorder.
Geo. E. Bryan,
Dep.

State of Iowa, ss.

Filed for record in office of Secretary of State Feb. 25, A. D. 1891, and recorded in book E-2, page 175.

W. M. McFarland,
Secretary of State.
By C. S. Byrkit,
Deputy.

State of Nebraska, }
Secretary's Office. }

Received and filed for record January 13, 1903, and recorded in book "E" of Railroad Corporations at page 1.

Geo. W. Marsh,
Secretary of State.
By Fred W. Miller,
Deputy.

Extract from the minutes of a meeting of the Board of Directors of the Mason City and Fort Dodge Railroad Company.

Held at the office of the Company, No. 31 Nassau Street, New York, N. Y., on Wednesday, the 7th day of January, 1903.

"Resolved, That the Mason City and Fort Dodge Railroad Company has accepted and does hereby accept the provisions of the Act of the Legislature of the State of Nebraska, entitled "An act to enable foreign corporations to become domestic corporations of this state," approved March 19th, 1889.

"Resolved, further, That for the purpose of enabling it to become a domestic corporation of the State of Nebraska, the Mason City & Fort Dodge Railroad Company does hereby direct that a true copy of its charter and Articles of Association, together with a certified copy of this resolution, be filed with the Secretary of State of the State of Nebraska."

This Certifies That the foregoing is a true copy of a resolution passed by the Board of Directors of the Mason City & Fort Dodge Railroad Company at a meeting held in the city of New York, N. Y., on the 7th day of January, 1903, as the same appears on record in the minutes of said meeting.

In Witness Whereof The Mason City & Fort Dodge Railroad Company has caused this certificate to be signed by its Secretary this 7th day of January, 1903.

The Mason City & Fort Dodge Railroad Company,
[CORPORATE SEAL] By Homer S. Pace,
Secretary.

State of Nebraska, }
Secretary's Office. }

Received and filed for record January 13, 1903, and recorded in book "E," Railroad Corporations, at page 1.

Geo. W. Marsh,
Secretary of State.
By Fred W. Miller,
Deputy.

JUDGE MCHUGH: We now offer in evidence a certified copy of the pleadings, orders and record of the District Court of the State of Nebraska within and for the County of Douglas, in the case entitled Ernest Stuht, Plaintiff, vs. The City of Omaha, et al., Defendants, together with the opinions filed in said cause.

MR. BALDWIN: We object to this as incompetent, immaterial, and irrelevant, the objection not being urged upon the ground that the originals are not offered.

The certified copy of the pleadings, orders, record, and opinions, etc., as above offered, are read in evidence and are as follows:

22–314

Ernest Stuht,
Plaintiff,
vs.
The City of Omaha et al.,
Defendants.

Docket 22—Number 314.

PLEAS before the Honorable A. N. Ferguson one of the Judges and the presiding Judge, of the District Court of the Fourth Judicial District of the State of Nebraska, at a Term thereof within and for the County of Douglas, begun and held at the City of Omaha, on the 2nd day of May, 1893.

BE IT REMEMBERED, That heretofore, to-wit: On the 30th day of December, A. D. 1890, Ernest Stuht by Cowin & McHugh his Attorneys, filed in the office of the Clerk of the District Court, in and for Douglas County, Nebraska, his petition against The City of Omaha, et al., which said Petition reads and is in the words and figures following, to-wit:

Petition.

IN THE DISTRICT COURT OF DOUGLAS COUNTY,
STATE OF NEBRASKA.

Ernest Stuht,
Plaintiff.
vs.
The City of Omaha, Richard C. Cushing, Mayor of the City of Omaha; Charles S. Goodrich, Comptroller of the City of Omaha; Thomas H. Benton, Auditor of Public Accounts of the State of Nebraska; Alvin Saunders, Trustee; The Omaha Union Depot Company, Thomas L. Kimball, President of The Omaha Union Depot Company,
Defendants.
} PETITION.

The plaintiff, Ernest Stuht, alleges that he is a resident and citizen of the City of Omaha, County of Douglas and State of Nebraska, and has been for more than twenty years last past; that he is a qualified elector of said City of Omaha and for the last twenty years he has been and now is a free holder and tax payer in the City of Omaha in the County of Douglas and the State of Nebraska, and that he brings this suit on his own behalf and upon the behalf of all others similarly interested; that all the tax payers of the City of Omaha are similarly interested with this plaintiff in the issues herein involved and that owing to the large number thereof it is impossible and impracticable to make them all parties plaintiff.

The plaintiff further alleges that the City of Omaha is a political organization organized as a city of the metropolitan class and governed by its provisions; that Richard C. Cushing is mayor of said City of Omaha and acting in that capacity; that Charles S. Goodrich is the Comptroller of said City and acting in that capacity.

That the Omaha Union Depot Company is a corporation organized and existing under and by virtue of the laws of the State of Nebraska; that Thomas L. Kimball is President of said Company.

And complaining further with respect to the defendant the Omaha Union Depot Company the plaintiff alleges that it was organized some time ago, for the purpose of securing land and constructing a union passenger depot, together with connecting railroad tracks, side tracks, turnouts, switches, offices, structures and approaches leading thereto necessary to the proper use and enjoyment thereof as a union railway passenger depot at and within the City of Omaha therein situated upon the grounds situated between Pacific street and Leavenworth street and between 5th street and 13th street.

The plaintiff further alleges that the defendant the City of Omaha, by its proper officers passed and enacted an ordinance known as Ordinance Number 2289, entitled "An Ordinance calling a special election to vote upon the proposition to issue coupon bonds of the City of Omaha in the sum of $150,000.00 to aid the Omaha Union Depot Company in the construction of a union railway passenger depot, railways and other works of improvement in the City of Omaha," such ordinance was approved October 30th, 1889.

Thereafter the said proposition was submitted to the electors of the City of Omaha and voted upon and more than two thirds of the votes cast at said election were in favor of said proposition. The ordinance above referred to contains the proposition so voted upon by the electors of the City of Omaha a copy of said ordinance and the proposition so voted upon is hereto attached, marked Exhibit "A" and made a part of this petition and for the allegations of fact with respect to the said ordinance and proposition so voted upon reference is hereby had to said ordinance, to avoid repetition herein.

Thereafter the City of Omaha by its Mayor and Council passed and enacted an ordinance known as Ordinance Number 2305, entitled "An Ordinance authorizing and directing the Mayor of the City of Omaha and Alvin Saunders, Trustee, to convey to the Union Pacific Railway Company all the right, title and interest of said City in and to certain depot grounds in the City of Omaha:" Said ordinance was duly approved November 13th, 1889. A copy of said ordinance is hereto attached, marked Exhibit "B" and made a part of this petition; and for allegations of fact respect to the contents of said ordinance and the

terms and conditions thereof, reference is hereby had to said ordinance, to avoid repetition herein.

The provisions of the last named ordinance with respect to authorizing the vesting of the title held by Alvin Saunders as trustee, and the City of Omaha, was dependent upon a compliance upon the part of the Omaha Union Depot Company with Ordinance Number 2289 above referred to, and both ordinances were to be construed together; but in this behalf the plaintiff further alleges that the defendant, the City of Omaha had no authority whatever to convey the lands therein in Ordinance Number 2305, referred to, to the Union Pacific Railway Company or to dispose of them in any other way; and such ordinance was enacted without authority of law and is illegal and void.

In due course of time the plaintiff alleges that the City of Omaha made and executed its bonds in the sum of $150,000.00 so voted as aforesaid under the proposition in this petition set forth, and the same were placed in the hands of the defendant, Charles S. Goodrich, Comptroller of the City of Omaha; but the said Charles S. Goodrich instead of retaining said bonds as he was by law and according to the terms of said proposition required to do, unlawfully and without any authority turned said bonds over to the defendant, Thomas H. Benton, as Auditor of Public Accounts for registration. This plaintiff does not know whether said bonds are now in the possession of said Thomas H. Benton as such Auditor of Public Accounts, or whether they have been delivered to Thomas L. Kimball as President of said Omaha Union Depot Company, but the plaintiff alleges the fact to be that said bonds are in the possession of one or all three of the following named defendants, that is to say, Charles S. Goodrich, Comptroller of the City of Omaha, Thomas H. Benton, State Auditor or Thomas L. Kimball, President of The Omaha Union Depot Company.

This plaintiff further alleges that the consideration moving to the electors of the City of Omaha for voting in favor of said proposition and the issue of said bonds was that there should be constructed in the City of Omaha at the point designated above, a suitable union passenger depot commensurate with the large business of the City and that all the trunk railroad lines from the east and

other railroad lines should have access to said depot, thereby giving to passengers in general the accomodation of being carried directly into the City of Omaha and of taking trains in the City of Omaha for all points north and south and east and west and such conditions are expressed in said proposition.

The plaintiff alleges that notwithstanding these facts, the Omaha Union Depot Company and the Union Pacific Railway Company, acting together in collusion and fraud, are seeking to, and unless enjoined by this court will avoid the terms and all material terms of said proposition beneficial to the electors of the City of Omaha, and to that end are seeking to secure said bonds without complying with said conditions.

A viaduct is being constructed across 10th street and a building purporting to be a Union Depot is being constructed on a part of the site mentioned; but the said building is not of the size substantially as shown by the sketch referred to in said proposition, but is much smaller. And the said Omaha Union Depot Company and the Union Pacific Railway Company have and are conspiring together to prevent any other railroad company from having access to said depot grounds and have refused to permit any other railroad whatever and are now refusing to permit any other railroad company whatever to enter upon said grounds; but on the contrary have placed in their way by force every obstacle possible to prevent such trains reaching said grounds; and to that end have and are locking all switches and locking all tracks whereon and whereby access could be had to said grounds by other railroads, that several other railroad companies have endeavored to reach said grounds and have been prevented in the manner above specified, and no action whatever is taken by the said Omaha Union Depot Company or said Union Pacific Railway Company to arbitrate with respect thereto, as provided by said proposition, but refuse to do so; and thereby all advantages to be gained by the issue of said bonds are entirely annulled and rendered impossible.

This plaintiff further alleges that the said Omaha Union Depot Company and the said Union Pacific Railway Company are further conspiring together to secure the use of said depot entirely for said Union Pacific Rail-

way Company and to the exclusion of all other companies, and seeking to secure the entire proceeds of said bonds.

With respect to the progress and construction of said union depot, the plaintiff alleges that there has not been $150,000.00 expended in the construction thereof as evidenced by vouchers and contracts or otherwise, and that there has not been expended more than $30,000.00 or $40,000.00.

All the considerations aforesaid apply to the granting and conveying of the real estate hereinbefore mentioned, and plaintiff alleges that all the defendants above named are acting together in harmony to perpetrate the wrongs aforesaid and unless restrained by the order of this Court the bonds will be turned over to the said Omaha Union Depot Company or its President, Mr. Kimball, and the benefits sought to be secured by the granting of the bonds will be wholly lost to the City of Omaha.

The plaintiff therefore prays that the defendants the said City of Omaha, Richard C. Cushing, Mayor thereof, Charles S. Goodrich, Comptroller thereof, and Thomas H. Benton, Auditor of Public Accounts, each and all of them, their and each of their officers, servants, agents, employes and counsellors, be enjoined and restrained from delivering the said $150,000.00 of bonds or any one thereof, to the said Omaha Union Depot Company, or the said Thomas L. Kimball, its President, or to any of its officers, agents, counsellors, servants or employes, until the further order of this court;

That if said bonds are in the possession of said City of Omaha or any of its officers, Mayor, Comptroller or other person, and that if said bonds or any part thereof are in the possession of said Richard C. Cushing, Mayor or Charles S. Goodrich, Comptroller, that they each and all of them be enjoined and restrained from parting with or disposing of said bonds or any part thereof in any manner whatever, directly or indirectly, and that they be commanded and directed to retain the same.

That if said bonds are in the possession of said Thomas H. Benton, Auditor of Public Accounts of the State of Nebraska, that he be commanded and required to return the same to Charles S. Goodrich, Comptroller of the City of Omaha, and that said Union Depot Company and its officers be enjoined and restrained from receiving said

bonds from any and all persons or corporations whomsoever;

That if said bonds are in the possession of said Omaha Union Depot Company or Thomas L. Kimball, its President, or any of its officers, that they, each and all of them are enjoined and restrained from disposing of them in any manner whatever, other than to return them to the said Charles S. Goodrich, Comptroller as aforesaid; and that the defendants, each and all of them be required in their answer herein to disclose whether they have such bonds or whether they have had said bonds or any of them, and what disposition, if any, has been made thereof; that the said City of Omaha, its officers, agents, employes and counsellors, and the said Alvin Saunders, Trustee, be enjoined and restrained from conveying the real estate described or referred to in said ordinance Number 2305, or any interest or any title therein or to or in any part or parcel thereof, to the said Union Pacific Railway Company or any other person or persons or corporation whomsoever; and that if deeds have been executed to said real estate or any portion thereof, that the same parties be enjoined and restrained from delivering said deeds or any of them or having the same recorded;

And that upon the final hearing of said cause the said parties be perpetually enjoined from conveying the said real estate or any interest therein and that the said bonds for $150,000.00 be surrendered and cancelled and for such other and further relief as is just and equitable.

Cowin & McHugh,
Attorneys for Plaintiff.

State of Nebraska, }
Douglas County. } ss.

Ernest Stuht, being first duly sworn, deposes and says that he is the above named plaintiff, and that the facts stated in the foregoing petition are true.

Ernest Stuht.

Subscribed in my presence and sworn to before me this 30th day of December, A. D. 1890.

Edith E. Doolittle,
Notary Public,
Douglas Co. Neb.

[SEAL]

## Exhibit A.

### Ordinance No. 2289.

An ordinance calling a special election to vote upon the proposition to issue coupon bonds of the city of Omaha in the sum of One Hundred and fifty thousand dollars ($150,000.00) to aid the Omaha Union Depot Company in the construction of a Union Railway Passenger Depot, railways and other works of internal improvement in the city of Omaha.

Be it ordained by the city council of the city of Omaha:

### Section One.

That a special election be and is hereby called for the city of Omaha on the twenty-eighth day of November, A. D. 1889, at which time there shall be submitted to the qualified electors of said city, the following proposition:

Shall the City of Omaha, Douglas County, Nebraska, issue its coupon bonds to the amount of one hundred and fifty thousand dollars ($150,000.00) to the Omaha Union Depot Company to aid it in the construction of a Union Railway Passenger Depot and its railroad and railroad track, side-tracks, turn-outs, switches, offices, structures, and approaches leading thereto necessary to the proper use and enjoyment thereof as a Union Railway Passenger Depot at and within the city of Omaha therein situate, upon grounds situated between Pacific street and Leavenworth street, and between Fifth street and Thirteenth street.

Such depot shall be built at least of the size and substantially of the general appearance shown by the sketch thereof now on file in the office of the City Clerk of the city of Omaha, and the viaduct or approach to said Union Railway Passenger Depot shall be built substantially in accordance with the plans and specifications thereof, which have received the approval of the Mayor and City Council, and of the Board of Public Works of said city. Said bonds to be issued in the sums of one thousand dollars ($1,000) each, to be made payable to bearer, to be dated on the first day of January A. D. 1890, and to become due and payable at twenty years from the date thereof, with annual interest after January First A.

D. 1891, at the rate of five per cent per annum, payable annually on the first day of each year, with interest coupons thereto attached both interest and principal to be payable at the fiscal agency of the state of Nebraska at the city of New York and each of which bonds shall recite:

"This bond is one of a series of one hundred and fifty bonds of like amount and tenor, which are issued by the city of Omaha, Douglas County, Nebraska, to the Omaha Union Depot Company to aid it in the construction of its railway and tracks, sidetracks, turn-outs, switches, structures and for works of internal improvement."

And shall the Mayor and City Council of the city of Omaha cause to be levied on the taxable property of said city a tax annually sufficient for the payment of the interest on said coupon bonds, as it becomes due, and after the expiration of ten years from the date of said bonds shall the Mayor and City Council of said city cause to be levied in addition to all other taxes on the taxable property of said city an amount of tax sufficient to create a sinking fund for the payment at maturity of said bonds, (the amount of tax to be levied for such sinking fund not to exceed fifteen thousand dollars ($15,000) in any one year); and shall the taxes be continued from year to year until the said bonds are fully paid.

Provided, however, that said bonds shall not be issued until there shall have been executed and delivered to the city of Omaha two certain bonds, as follows, to-wit:

1st: The written bond of said Omaha Union Depot Company in the sum of two hundred thousand dollars ($200,000) as liquidated and agreed damages to be also signed by the Union Pacific Railway Company and the Chicago, Burlington and Quincy Railroad Company as sureties for said Omaha Union Depot Company, conditioned for the construction and maintenance of said Union Depot by said Omaha Union Depot Company in the manner and form above specified, with the necessary tracks, sidetracks, turn-outs, switches and approaches, including the said viaduct or approach over and upon Tenth street in a good workmanlike manner; said viaduct or approach to be completed on or before January First 1891, and said Union Depot to be opened for use on or before January First 1892; unless the construction of such structures or either of

them shall be delayed by a strike or strikes, or by injunctions or other judicial proceedings. To the extent of such delays, the last named times shall each be extended.

Said bonds to be further conditioned, that any and all railroad companies, that may desire the privilege shall have the right to run passenger trains into and from said Union Depot upon just and equitable terms to be agreed upon between the said Omaha Union Depot Company and the railroad company making application therefor; and in case the said companies are unable to agree as to what are just and equitable terms, the question shall be submitted to three arbitrators, one to be chosen by each of said companies, and the two thus selected to choose the third, the decision of any two of said arbitrators to be binding upon both companies.

Second: The written bond of the Union Pacific Railway Company in the sum of two hundred thousand dollars ($200,000) as liquidated and agreed damages conditioned that any and all railroad companies that may desire the privilege, shall have the right to run their passenger trains over the Missouri River bridge and approaches thereto of said Union Pacific Railway Company, using therefor its tracks from the Union Transfer at Council Bluffs, Iowa, to and from the said Omaha Union Depot, upon just and equitable terms, to be agreed upon between the Union Pacific Railway Company and the railroad company making application for such use of said railroad tracks, and bridge, and in case the said companies are unable to agree as to what are just and equitable terms, the question shall be submitted to three arbitrators, one to be chosen by each of said companies, and the two thus selected to choose the third the decision of any two of said arbitrators to be binding upon both companies.

Upon the execution and delivery of said bonds to the city of Omaha, the Mayor thereof shall deposit the coupon bonds of the city, herein provided for, with the banking firm of Kountze Brothers, who shall deliver them to the Omaha Union Depot Company on January First 1891, or as soon thereafter as they are presented with a certificate from the President of the Omaha Union Depot Company, attested by the Mayor of the city of Omaha, to the effect that the viaduct in this proposition mentioned has been opened for use, and when not less than one hundred and

fifty thousand dollars ($150,000) shall have been expended on construction of said depot as evidenced by vouchers and contracts for material therefor.

SECTION TWO.

If two-thirds of the votes cast at said election shall be in favor of the proposition hereby submitted, then the Mayor and City Clerk of the city of Omaha shall be authorized to execute and issue the said coupon bonds as hereinbefore provided, and shall deliver said bonds according to the terms of said proposition.

SECTION THREE.

The form in which the above proposition shall be submitted shall be by ballot, upon each of which shall be printed or written, or partly printed or written, the words following, to-wit:

"For Omaha Union Depot Bonds and tax—Yes," or "For Omaha Union Depot bonds and tax—No."

And if two-thirds of the votes cast at said election shall have thereon "For Omaha Union Depot bonds and tax—Yes," then said proposition shall be declared adopted, and if more than one-third shall have upon them "For Omaha Union Depot bonds and tax—No," then said proposition shall be declared lost.

SECTION FOUR.

The Mayor shall at once upon the approval of this ordinance cause a proclamation and notice to be made for the holding of the special election herein ordered.

SECTION FIVE.

This ordinance to take effect and be in force from and after its passage. Passed Oct. 30th, 1889. J. B. Southard, City Clerk. Michael Lee, Presdt. City Council. Approved October 30th, 1889. W. J. Broatch, Mayor.

I hereby certify that the above is a true and correct copy of ordinance No. 2289 now on file in this office. John Groves, City Clerk. [Seal]. Omaha, Neb., Dec. 30, 1890.

## Exhibit B.

### Ordinance No. 2305.

An ordinance authorizing and instructing the Mayor of the city of Omaha and Alvin Saunders, Trustee, to convey to the Union Pacific Railway Company all the right, title and interest of said city in and to certain depot grounds in the city of Omaha.

Whereas, on the twentieth day of January, 1872, Alvin Saunders, as trustee, conveyed to the Union Pacific Railroad Company certain lands to be used by said company for the purpose of erecting, maintaining and operating thereon passenger and freight depots, and for other purposes set forth in said deed of Alvin Saunders, Trustee, which said deed appears of record in Book 12 of Deed Records, Douglas County, Nebraska, pages 220 and following, and is referred to for greater certainty of description; and

Whereas, the description of lands in said deed contained, omitted to include lot three, in block two hundred and thirty-six, in the city of Omaha, and other property held by said Saunders, trustee; and

Whereas, it is of great importance to the city of Omaha that a Union Railway Passenger Depot shall be erected, constructed and operated upon said lands; and

Whereas, the Omaha Union Depot Company has become duly incorporated for the purpose of locating, erecting, maintaining and operating a Union Railway Passenger Depot in the City of Omaha, and desires to locate the same upon a portion of the lands hereinbefore described, and

Whereas, the Union Pacific Railroad Company has become consolidated with some other railroad corporation or corporations into a consolidated company, which said company as consolidated is the Union Pacific Railway Company, and as the successor of the Union Pacific Railroad Company has become vested with all the title of said railroad company in and to said lands; and

Whereas, the said Omaha Union Depot Company must secure that portion of said lands needed for its Union railway passenger depot, if at all, from said Union Pacific Railway Company; and

Whereas, it is feared that, by reason of the character of the conveyance of said lands by said Saunders as Trustee, that said lands are so vested in said Union Pacific Railway Company that that corporation cannot deed, lease or otherwise convey the same to any other corporation for any purpose whatever, and that its so doing may forfeit whatever right and title it now has in and to the same, as well as those included in said deed of Saunders, Trustee; and

Whereas, the said Union Pacific Railway Company desires to further the construction of a union railway passenger depot at Omaha, but is not willing to convey to the Omaha Union Depot Company any of the premises heretofore conveyed to it by Alvin Saunders, Trustee, unless the city of Omaha and the said Alvin Saunders, Trustee, shall convey to it by deed the premises hereinafter described; and

Whereas, the city of Omaha desires to confirm the said necessary lands in the Omaha Union Depot Company and to the Railway Company aforesaid. Now, therefore,

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF OMAHA:

SECTION ONE.

That the Mayor of the city be and he is hereby authorized and instructed to execute and deliver to the said Union Pacific Railway Company a good and sufficient deed conveying to it all and singular all of the estate, right, title and interest, reversion or reversions, remainder or remainders, and the estate of the said city, both in law and in equity, in and to all of the following described tract of land, situate in the city of Omaha, Douglas County, Nebraska, to-wit: Lot number three in Block number two hundred and thirty-six in said city.

Said deed to be so delivered to the Union Pacific Railway Company by the Mayor of said city when the Omaha Union Depot Company with the Union Pacific Railway Company and the Chicago, Burlington and Quincy Railway Company as its sureties and when the Union Pacific Railway Company have severally executed and delivered to the said Mayor for the city of Omaha the two bonds described in an ordinance of the city of Omaha

entitled "An ordinance calling a special election to vote upon the proposition to issue coupon bonds of the city of Omaha in the sum of one hundred and fifty thousand dollars ($150,000) to aid the Omaha Union Depot Company in the construction of a Union Railway Passenger Depot, railways and other works of internal improvement in the city of Omaha."

SECTION TWO.

Alvin Saunders as trustee, holding the title to the following premises in section one hereof described, namely; Lot three in block two hundred and thirty six is hereby authorized and required to make, execute and deliver to the Union Pacific Railway Company a good and sufficient deed conveying to it all of the premisis in section One hereof described, which deed is to be by him delivered, however, to said Union Pacific Railway Company at the same time and upon the same conditions which the Mayor of the City of Omaha shall deliver to said company the deed in section One hereof mentioned.

SECTION THREE.

This ordinance to take effect and be in force from and after its passage. Passed Nov. 12th 1889, J. B. Southard, City Clerk; Michael Lee, President City Council. Approved Nov. 13, 1889, W. J. Broatch, Mayor.

I hereby certify that the within is a true copy of ordinance No. 2305 on file in this office.

John Groves,
City Clerk.

[SEAL]

Omaha Dec. 30th, 1890.

Afterward, on the 30th day of December, 1890, Bond was filed herein, which said Bond is in the words and figures following, to-wit:

Bond.

In the District Court for Douglas County,
State of Nebraska.

Ernest Stuht,
Plaintiff.
vs
The City of Omaha, Richard C. Cushing, Mayor of the City of Omaha, Charles S. Goodrich, Comptroller of the City of Omaha; Thomas H. Benton, Auditor of Public Accounts of the State of Nebraska; Alvin Saunders, Trustee; The Omaha Union Depot Company, Thomas L. Kimball, President of the Omaha Union Depot Company,
Defendants.
} Undertaking.

Whereas, In an action pending in the District Court of the State of Nebraska, within and for the County of Douglas in said state, wherein Ernest Stuht is plaintiff and The City of Omaha and others, the defendants above named, are defendants, the plaintiff has obtained an order of injunction against the said defendants upon his giving an undertaking in the sum of $500.00.

Now therefore, we, Ernest Stuht as principal and .....as sureties hereby undertake to the above named defendants in the sum of $500.00, that the said plaintiff shall pay to the said defendants all damages which they may sustain by reason of said injunction if it be finally determined that the said injunction ought not to have been granted.

Dated this 30th day of December A. D. 1890.

Ernest Stuht,
N. B. Apple.

I hereby approve of the above undertaking and the sureties thereon this 30th day of December, A. D. 1890.

Frank E. Moores,
Clerk.

Afterward, on the 5th day of January, 1891, Motion was filed herein, which said Motion is in the words and figures following, to-wit:

Motion.

In District Court for Douglas County, Nebraska.

Ernest Stuht, Plff.
vs
The City of Omaha, et al. Defts.
} Motion.

And now comes John D. Howe, who is a resident, a citizen and owner of real estate and a tax payer in the City of Omaha, Nebraska, and moves the Court to admit him as a party plaintiff in this action.

John D. Howe.

State of Nebraska, } ss.
County of Douglas. }

John D. Howe, being first duly sworn, deposes and says that the facts set forth in the foregoing motion are true.

John D. Howe.

Subscribed in my presence and sworn to before me January 5th, 1891.

Frank E. Moores,
Clerk.

Afterward, at the September term of Court and on the 5th day of January, 1891, an Order was entered herein, as follows, to-wit:

Order.

Ernest Stuht, Plff.
vs
The City of Omaha, et al.

And now upon the motion of John D. Howe, a resident, citizen and tax payer of the City of Omaha, he the said John D. Howe, is hereby made a party plaintiff in this action with said Stuth.

On motion of the plaintiff leave is given to file an amended petition herein by Saturday morning next.

On motion of the plaintiff the hearing upon the application for a temporary injunction is hereby postponed to and set for Saturday morning next January 10th, 1891, at 10 A. M.

And the restraining order granted herein is continued in force till then and till the further order of the Court.

Geo. W. Doane,
Judge.

Jan. 5, 1891.

Afterward, on the 7th day of January, 1891, Amended Petition was filed herein, which said Amended Petition is in words and figures following, to-wit:

IN THE DISTRICT COURT FOR DOUGLAS COUNTY, NEBRASKA.

Amended petition.

Ernest Stuht and John D. Howe, Plaintiffs,
vs
The City of Omaha, Richard C. Cushing, its Mayor, Charles S. Goodrich, its City Comptroller, the Omaha Union Depot Company, (of Omaha) Alvin Saunders & Thomas L. Kimball, President of said Union Depot Company, Thomas H. Benton, Defendants.
} AMENDED PETITION.

And now come the plaintiffs above named and for amended petition filed by leave of the Court herein, say:

That each of said plaintiffs is, and for more than two years last past has been, a resident, citizen and tax payer in the City of Omaha, said County, and that he owns considerable amounts of real estate and other property in said City which is subject to taxation in said City for city and other purposes and is liable to assessment and taxation for the purpose of paying the principal of and interest on the bonds proposed to be issued in the name of the City hereinafter described; and that he brings this action in his own behalf as well as in the behalf of all other citizens and tax payers of said City, who are too numerous to be made parties to this action.

And plaintiffs further say that said City of Omaha, defendant, is a municipal corporation existing under the laws of this State and is of the Metropolitan class; that Richard C. Cushing, defendant, is is its Mayor; that Chas. S. Goodrich, is its City Comptroller; and that the Omaha

Union Depot Company is a corporation created and existing under the laws of Nebraska having its principal office in the City of Omaha, and that Thomas L. Kimball is its president; said Thomas H. Benton is Auditor of Public Accounts of the State of Nebraska.

Said plaintiffs complain of said defendants and Alvin Saunders and further say that on or about the 30th day of October, 1889, the City Council of said city passed an ordinance, submitting to the electors of said City, a proposition, a copy of which is hereto annexed marked "A" and made part hereof, which ordinance received the approval of Mayor Wm. J. Broatch, the same night; that said Mayor did, on or about said date, issue his proclamation (which is shown in said Exhibit "A") calling a special election for November 28th, 1889, (Thanksgiving Day) which said day was a day appointed for religious observance, and thanksgiving by the President of the United States and by the Governors of the respective states, and was not a day upon which an election might be lawfully held, many people being conscientiously opposed to doing secular work or business on that day. That a general election in said city was called for December 3rd, 1889, but that said special election was called for Thanksgiving Day because it was understood and believed that the electors of the city would not generally attend the polls and vote on that day for said reason and others; and the fact is, that only about 30 per cent of the electors of said city voted on said proposition at said alleged election.

The Plaintiffs further say that neither the Mayor and Council of said city, nor both combined, have authority in law, to order an election for the purpose of voting on said proposition, because the Charter of said City does not authorize the bonds of said city to be issued for said purpose and because no other law of the state authorizes said City to vote or issue its negotiable or other bonds for said purpose. That said proposition, it is pretended by said city officers, if voted and carried at said election, will authorize them to issue the negotiable bonds of the City of Omaha for the sum of One Hundred and Fifty Thousand Dollars ($150,000.00). Payable to bearer, to be delivered immediately to Kountze Brothers, who are bankers doing business in New York City, New York, to be by them delivered to said alleged corporation named in said propo-

sition, to-wit, The Omaha Union Depot Company, as a donation, for the purpose of aiding it in the construction of a Union Depot in said City, as shown in said proposition; but plaintiffs allege that the real purpose for which said city so threatens to issue said bonds is to pay the cost of a viaduct on Tenth Street in said City, from Jackson to Mason Streets, over the railway tracks of certain railway companies to-wit: The Union Pacific Railway Company and the Chicago, Burlington and Quincy Railroad Company, which cross Tenth St. near Mason Street, and practically destroy said portion of Tenth Street, for the real purpose of evading and defeating the law which provides that said railway Companies shall pay for such improvement; that said proposition has been made at the instance and on the request of said railway Companies, the said City Council and Mayor of said City conspiring and colluding with said companies to cast upon the tax payers of said city the cost of said viaduct, thus evading and defeating the law and practicing a fraud upon the law and upon said tax payers and citizens. And in that behalf said plaintiffs say that said alleged proposed Union Depot is not, within the meaning of the laws, a work of internal improvement, nor is said proposed viaduct a work of internal improvement, as said City officers pretend, claiming that said city is, under the general laws of the State, authorized to vote and issue its negotiable bonds for works of internal improvement, although all power of the city to issue such bonds is found in its charter, and not elsewhere, and no such authority is found in said Charter.

Plaintiffs further say that said proposition provides for the levy of taxes upon all the taxable property of said city to pay the principal and interest of said proposed bonds, as appears by said Exhibit "A"; and that said City proposes to and will, unless restrained by the injunction of this Court, immediately issue said bonds under its corporate seal, and send them to New York so that they may be without the jurisdiction of our Courts and so that they may be sold to innocent purchasers, it being their intent, by untrue and false recitals on the face of said bonds, to show that they are the valid and legal obligations of said City; all as appears from said proposition. That at said election, only about 30 per cent of the voters

of said City voted and said proposition was declared adopted by the votes of a ⅔ of those so voting.

That said Union Depot, so called, it is alleged is to consist of a large number of tracts and buildings for offices, and is solely to accommodate the business of said railroad companies, and is to be a private venture, or investment, for speculative purposes for the pecuniary benefit of a few individuals. That said Union Depot has been organized as a corporation within the past few months the principal part of whose capital stock it expects to derive by gifts of real estate and bonds by the City of Omaha as in this petition shown; that said Depot Company intends to lease said property to a large number of railroads Companies as tenants and to require each of them to pay large rentals so as to secure therefrom enormous revenues for its stock-holders, thereby rendering said depot property oppressive and burdensome to the railroad tenants for whose use much of said real estate in this petition described was donated by the citizens of Omaha, and, also to the people who contributed to said property, by unjust exactions from them.

And plaintiffs farther say that the said ordinances and proceedings require as conditions precedent to the right of the Depot Company to said Bonds and to the deeds for the real estate below named, the performance by it of other things than those herein specially mentioned which things said depot Company has neglected and refused to perform; and, among others, it was to construct a depot building which was to be "at least of the size and substantially of the general appearance shown by the sketch thereof" then on file with the City Clerk of said City, when it has in fact undertaken to construct (as the plaintiffs are informed and believe) one much smaller in dimensions and otherwise not what said proposition provided for; and plaintiff farther says on information and belief that the plans and specifications for said work as originally adopted by the City and its electors before said election, were afterwards materially altered and changed in substantial particulars, without the consent of said city or electors and without authority of law; (Amendment here) (Amendment to amended petition allowed to be made on the trial.) That the Mayor and council unlawfully and fraudulently and without the authority of the electors, on or about March

15, 1890, long after the election, approved substituted plans for said depot and viaduct that were radically different from those described in the proposition submitted to the electors, purporting an entirely different contract from that so voted upon, and which substituted plans are the ones which said depot company has commenced to execute as herein elsewhere shown in lieu of the ones agreed upon by the electors, and also so avers that not to exceed $30,000, or $40,000.00, have been expended upon said depot although the said proposition requires that $150,000.00, shall be so expended before said bonds shall be issued; and plaintiff further says that two eastern railroads, to-wit: the Chicago, Milwaukee, and St. Paul & the Chicago, Rock Island and Pacific Railroad Company for whose use in part said donation of bonds and lands were to be made, and which were to have the benefit of said Depot & Bridge as provided in said proposition, have been prevented from coming on to said depot grounds by said Depot Company, its officers and agents, as plaintiffs are informed and believe, and in direct violation of said agreements which are condition precedent as aforesaid.

And the plaintiff further says that said Mayor and Council by ordinance have ordered, or are about to order said Mayor of said City to make, execute and deliver to said Depot Company a conveyance of a large amount of very valuable real estate and of the value of many hundreds of thousands of dollars, which act is about to be done and will be done unless restrained by the injunction of this Court, which said act so threatened is wholly in violation of law; but that said act if consumated, will cast a cloud upon the title and ownership of said city in said real estate and cause it great and irreparable damages. That said real estate, consisting of about twenty (20) acres, situate near the west end of the Union Pacific Railway bridge and extending to near Tenth Street, was purchased about the year 1872 by said City with the proceeds of the negotiable bonds of the city for Two Hundred Thousand Dollars ($200,000.00) which were voted by the electors of said city for a special purpose and for certain trusts, for which purposes and trusts said real estate and lots were purchased and to which they were and are by law devoted; that they were purchased by said City with the proceeds of said bonds, not for the said Union Depot corporation, but for

another corporation, to-wit; the Union Pacific Railroad company, and were to be given to the latter corporation in consideration that it construct its bridge across the Missouri River at Omaha, that the eastern terminus of its railway should be and remain in Omaha, that said Company should upon said grounds make up all of its regular west bound passenger and freight trains, that all passengers and freight trains coming from the east on any and all railroads should be delivered and transferred upon said grounds, that said company should expend at least One Hundred Thousand Dollars ($100,000.00) in depot buildings and the like improvements upon said grounds, that all its machine and repair shops should be erected and maintained at Omaha, and that eastern railroads should have the right to use its bridge for reasonable compensation; and said twenty (20) acres of land or a large part thereof were on the 20th day of January, 1872, conveyed by Alvin Saunders as trustee, (he holding the same as trustee) to the Union Pacific Railroad Company, but upon certain trusts described in said deed, a copy of which is hereto annexed marked "B" and made part hereof; which conveyance was upon this condition and limitation, namely, "Hereby limiting the use of said premises to the legitimate purposes of depot and transfer grounds and grounds for right of way and approaches to said Missouri River Bridge subject to the conditions and restrictions contained" in the contract with said Company above set out; and upon the proviso and farther condition that in case said premises or any part thereof be abandoned or disused or converted to any other than the uses and purposes above described by said Company then the same should revert to and become the property of said City. Said deed was recorded in the records of this County, February 2nd, 1872, and recorded in Book 12 of Deeds at page 220. That the portion of said real estate not so deeded to said company is still in trust for the purposes aforesaid.

Plaintiff further says that said Union Pacific Railroad Company never performed its said agreements but has refused so to do, but that a part of said lands have been conveyed to it but are held by it impressed with said trusts and subject thereto and are now held by it without right or authority and by the mere sufferance of said city.

That if said lands or any of them are now conveyed to another party it will relieve the said Union Pacific Railway Company from the performance of its said agreements, will destroy the security the city has therefor, and divert said property bought with the proceeds of bonds of the city voted for a certain purpose to other purposes and defeat the will of the people; which act if consummated by said City officers will be in violation of law and of great and irreparable injury to said City. Said City also threatens to and will, unless restrained by the injunction of this Court, attempt by ordinance to authorize and empower said Union Pacific Railway Company to convey to said Union Depot Company certain of the real estate so conditionally and subject to said limitations conveyed to it, free and discharged of such condition, limitation and trust, but that such attempt and proposed action is in violation of law and outside the scope of the power and duty of said Mayor and Council, and, if consummated, will work great and irreparable damage to said city and its tax payers. And further says that said City and its officers by ordinance or otherwise threaten to authorize said Union Pacific Railway Company and Alvin Saunders, to grant the title to the said lands, in whole or in part, to said Depot Company in violation of said trust and condition in said deed and in violation to rights of said grantor, said City, and its inhabitants; and that said City and said Saunders threaten to and will unless restrained by the injunction of this Court, execute and deliver deeds conveying some of such real estate to or for the use of said Depot Company.

Plaintiff further says on information and belief that said proposed issue of bonds in the sum of One Hundred and Fifty Thousand Dollars ($150,000.00) together with other bonds of said City issued to aid works of internal improvement exceed the limit on the amount of such bonds which said city is by law authorized to issue for such purposes.

Plaintiff further says that the bond for Two Hundred Thousand Dollars ($200,000.00), which said Union Depot Company was to deliver to said City under the terms and provisions of said proposition submitted to the electors of said City, November 28, 1889, has not yet been delivered; nor has the other bond for Two Hundred Thousand Dol-

lars ($200,000.00), which is described in said proposition been delivered to said City.

WHEREFORE, plaintiff prays that said City, its Mayor and City Clerk, its other officers, agents and attorneys, or any of their successors in office, and each of them, be restrained and enjoined from signing, executing, sealing, issuing or delivering to any party any of the negotiable bonds of the City of Omaha, or other security in its name, described in said proposition, or any City bonds for or on account thereof, or under the authority of any of said proceedings thereinbefore described or referred to.

And secondly, said city; its mayor and city council or other officers, their and each of their successors in office and said Saunders be restrained and enjoined from making any conveyance or grant of any of said real estate or property of the City or interest therein to said Depot Company, or other party for its use and benefit, or otherwise, meaning said twenty (20) acres of "depot grounds," so called, described in said deed of Alvin Saunders to said Union Pacific Railroad Company, which is recorded in book 12 at page 220 of the deed records of said County, or any part of it, and that neither of said officers, or their successors, or said Saunders, by any resolution, ordinance deed or instrument or otherwise, consent to or authorize the Union Pacific Railway Company, or other party, granting, conveying, leasing or otherwise disposing of any of said real estate to any party, or otherwise release or impair the limitations, conditions or restrictions placed upon the title to said real estate, or any of it, or otherwise release or impair any right, trust, or title of said City in or to any of said real estate. And that said Saunders be restrained from granting or conveying or executing any instrument to said depot Company or other party touching or affecting the title to any of said real estate.

And that on the final hearing said injunction be made perpetual and for general relief and costs of suit.

Ernest Stuht,
By Cowin & McHugh,
His Attorneys.
John D. Howe, pro se.

State of Nebraska, } ss.
Douglas County. }

Ernest Stuht being first duly sworn deposes and says that he is the plaintiff above named and that the facts set forth to the foregoing petition are true, except such as are stated to be on information and belief, and that as to such allegations they are true to the best of his knowledge, information and belief.

Ernest Stuht.

Subscribed in my presence and sworn to before me January 6th A. D. 1891.

Edith E. Doolittle,
Notary Public,
Douglas Co. Neb.

[SEAL]

"A"

PROCLAMATION AND NOTICE OF SPECIAL ELECTION.

I, William J. Broatch, mayor of the city of Omaha, do issue this, my proclamation, and by virtue of the authority vested in me as mayor of said city, and in compliance with the request and direction of the city council of said city, as given by an ordinance of said city, entitled "An ordinance calling a special election to vote upon the proposition to issue coupon bonds of the city of Omaha in the sum of one hundred and fifty thousand dollars, ($150,000) to aid the Omaha union depot company in the construction of a union railway passenger depot, railways and other works of internal improvement in the city of Omaha," approved October 30, A. D. 1889, do hereby give public notice unto the electors of said city of Omaha that a

SPECIAL ELECTION

will be held in said city, at the respective places hereinafter designated, on Thursday, the 28th day of November A. D. 1889, for the purpose of submitting to the——— city the question of consenting or refusing to consent to the terms of the following proposition:

Shall the city of Omaha, Douglas County, Nebraska, issue its coupon bonds to the amount of one hundred and fifty thousand dollars ($150,000) to the Omaha union depot company to aid it in the construction of a union railway

passenger depot, and its railroad and railroad tracks, side-tracks, turnouts, switches, offices, structures and approaches leading thereto, necessary to the proper use and enjoyment thereof as a union railway passenger depot at and within the city of Omaha therein situate, upon grounds situated between Pacific street and Leavenworth street, and between Fifth street and Thirteenth street.

Such depot shall be built at least of the size and substantially of the general appearance shown by the sketch thereof now on file in the office of the city clerk of the city of Omaha, and the viaduct or approach to said union railway passenger depot shall be built substantially in accordance with the plans and specifications thereof, which have received the approval of the mayor and city council and of the board of public works of said city. Said bonds to be issued in the sums of one thousand dollars ($1,000) each, to be made payable to bearer, to be dated on the First day of Jan. A. D. 1890, and to become due and payable at twenty years from the date thereof, with annual interest after January First A. D. 1891, at the rate of 5 per cent per annum, payable annually on the first day of each year, with interest coupons thereto attached, both interest and principal to be payable at the fiscal agency of the state of Nebraska at the city of New York and each of which bonds shall recite:

"This bond is one of a series of one hundred and fifty bonds of like amount and tenor, which are issued by the City of Omaha, Douglas County, Nebraska, to the Omaha union depot company, to aid it in the construction of its railway and tracks, side tracks, turn outs, switches, structures and for works of internal improvement."

And shall the mayor and city council of the city of Omaha cause to be levied on the taxable property of said city a tax annually sufficient for the payment of the interest on said coupon bonds, as it becomes due, and after the expiration of ten years from the date of said bonds shall the mayor and city council of said city cause to be levied in addition to all other taxes on the taxable property of said city an amount of tax sufficient to create a sinking fund for the payment at maturity of said bonds, (the amount of tax to be levied for such sinking fund not to exceed fifteen thousand dollars ($15,000) in any one

year); and shall the taxes be continued from year to year until the said bonds are fully paid.

Provided, however, that said bonds shall not be issued until there shall have been executed and delivered to the city of Omaha two certain bonds as follows, to-wit:

First: The written bond of said Omaha union depot company, in the sum of two hundred thousand dollars ($200,000) as liquidated and agreed damages to be also signed by the Union Pacific Railway company and the Chicago, Burlington & Quincy railroad company as sureties for said Omaha union depot company, conditioned for the construction and maintenance of said union depot by said Omaha union depot company in the manner and form as above specified, with the necessary tracks, side tracks, turn outs, switches and approaches, including the said viaduct or approach over and upon Tenth street in a good workmanlike manner; said viaduct or approach to be completed on or before January First, 1891, and said union depot to be opened for use on or before January First, 1892; unless the construction of such structures or either of them shall be delayed by a strike or strikes, or by injunctions or other judicial proceedings. To the extent of such delays the last named times shall be extended.

Said bond to be further conditioned, that any and all railroad companies, that may desire the privilege, shall have the right to run passenger trains into and from said union depot upon just and equitable terms to be agreed upon between the said Omaha union depot company and the railroad company making application therefor. And in case the said companies are unable to agree as to what are just and equitable terms the question shall be submitted to three arbitrators one to be chosen by each of said companies and the two thus selected to choose the third, the decision of any two of said arbitrators to be binding upon both companies.

Second. The written bond of the Union Pacific Railway company in the sum of two hundred thousand dollars ($200,000) as liquidated and agreed damages, conditioned that any and all railroad companies that may desire the privilege shall have the right to run their passenger trains over the Missouri river bridge and approaches thereto of said Union Pacific railway company, using therefor its tracks from the Union transfer at Council Bluffs, Ia., to

and from the said Omaha union depot, upon just and equitable terms, to be agreed upon between the Union Pacific railway company and the railroad company making application for such use of said railroad tracks and bridge, and in case the said companies are unable to agree as to what are just and equitable terms, the question shall be submitted to three arbitrators, one to be chosen by each of said companies and the two thus selected to choose the third, the decision of any two of said arbitrators to be binding upon both companies. Upon the execution and delivery of said bonds to the city of Omaha, the mayor thereof shall deposit the coupon bonds of the city, herein provided for, with the banking firm of Kountze Brothers, who shall deliver them to the Omaha union depot company on January first, 1889, or as soon thereafter as they are presented, with a certificate from the president of the Omaha union depot company attested by the mayor of the city of Omaha to the effect that the viaduct in this proposition mentioned has been opened for use, and when not less than one hundred and fifty thousand dollars ($150,000) shall have been expended on construction of said depot as evidenced by vouchers and contract for material therefor.

If two-thirds of the votes cast at said election shall be in favor of the proposition hereby submitted then the mayor and city clerk of the city of Omaha shall be authorized to execute and issue the said coupon bonds as hereinbefore provided, and shall deliver said bonds according to the terms of said proposition.

The form in which the above proposition shall be submitted shall be by ballot, upon each of which shall be printed or written or partly printed or written the words following, to-wit:

"For Omaha union depot bonds and tax—Yes." or

"For Omaha Union Depot bonds and tax—No."

And if two-thirds of the votes cast at said election shall have thereon "For Omaha union depot bonds and tax—Yes," then said proposition shall be declared adopted, and if more than one-third shall have upon them "For Omaha union depot bonds and tax—No," then said proposition shall be declared lost.

Said election shall be open at 8 o'clock in the morning of said 28th day of November, A. D. 1889, and will continue open until 6 o'clock of the same day in the re-

spective wards and districts and at the respective places, the same being the usual places for holding general city elections, following, to-wit:

FIRST WARD.

First District, Corner Jones and Tenth street, barber shop.

Second District, Sixteenth between Pacific and Pierce Streets, Alvin's barber shop.

Third District, Corner Eleventh and Dorcas streets, engine house No. 4.

SECOND WARD.

First District, South end of Sixteenth street viaduct Gibson and Hartman's building.

Second District, Corner Seventh and Vinton streets, Arnot & Co's. store.

THIRD WARD.

First District, No. 1006 Davenport street.

Second District, Corner Tenth and Howard streets, Occidental hotel.

FOURTH WARD.

First District, Planter's house.

Second District, No. 1805 St. Mary's avenue.

FIFTH WARD.

No. 604 North Sixteenth street.

Second District, Corner Sixteenth and Izard streets, engine house.

SIXTH WARD.

First District, Twenty-fourth street sixth ward republican club.

Second District, Twenty-fourth street and Belt railway line crossing.

Third District, 1910 North Thirty-third street, Stevens' grocery.

SEVENTH WARD.

First District, Corner Woolworth and Park avenue, Thompson's building.

Second District, Twenty-ninth and Shirley streets, near Qualey's school house.

EIGHTH WARD.

First District, 2108 Cuming street, Burdick's harness shop.

Second District, 2403 Cuming street, barber shop.

NINTH WARD.

First District, Twenty-ninth and Farnam streets, C. J. Johnson's store.

Second District, Corner Lowe avenue and Mercer street Ryan's office.

Thus done and proclaimed in the city of Omaha this 31st day of October A. D. 1889.

W. J. Broatch,
Mayor of the City of Omaha.

EXHIBIT B.

Alvin Saunders Trustee.
To
The U. P. R. R. Company.

This indenture made this twentieth day of January, in the year one thousand eight hundred and seventy-two, by and between Alvin Saunders, trustee of the City of Omaha in the State of Nebraska, party of the first part, and the Union Pacific Rail Road Company, party of the second part; Witnesseth: Whereas the real estate and premises hereinafter described were conveyed to said party of the first part by divers persons under the direction of a commission or board of adjustment appointed by the City of Omaha, to make settlement with the owners of certain lots and lands required by the said party of the second part, for depot and transfer grounds and grounds for right of way, connected with its bridge over the Missouri River, all of which lands and premises were paid for by the said City of Omaha and conveyed to the said party of the first part as aforesaid, to be by him held in trust for said City during the time required to make such settlement or adjustment, and afterwards to convey the same to the said party of the second part, hereto when directed so to do by said City of Omaha, with such restrictions and limitations as might be deemed necessary to protect the interests of said city, all of which will more fully appear on reference to a certain instrument in writing containing a formal declaration of said trust, executed by the said Alvin Saunders on the Thirty-first day of August one thousand eight hundred and sixty nine and recorded on the first day of September, one thousand eight hundred and sixty nine in

Book seven of deeds at page two hundred and seventy seven of the Records of Douglas County in the State of Nebraska.

And whereas, the City Council of said city of Omaha, by resolution passed on the second day of January one thousand eight hundred and seventy two did direct the said party of the first part to make, execute and cause to be delivered to said party of the second part a deed to the said real estate, and premises hereinafter described, subject to the terms, conditions and restrictions of a certain contract of which the following is a copy to-wit:

"Agreement made this first day of January in the year of our Lord one thousand, eight hundred and seventy two by and between the Union Pacific Railroad Company authorized by law of Congress to build a bridge across the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska, and its successors party of the first part, and the City of Omaha, Nebraska, and the County of Douglas in the state of Nebraska, parties of the second part, Witnesseth: That whereas, the parties hereunto desire to arrange for the more perfect connection of any Rail Roads, that are or shall be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska.

Now in consideration of the premises and the receipt by the party of the first part of the Bonds of said Douglas County, to the amount of Two Hundred and fifty thousand dollars and in further consideration of the receipt by the party of the first part of a deed from the said City of Omaha to certain real estate in said city known as the depot grounds and right of way.

The party of the first part for itself and its successors covenants and agrees to and with the said County of Douglas and the said City of Omaha as follows, to-wit:

First: That it will construct, complete and maintain a rail road bridge over the Missouri River at the said city of Omaha.

Second: That the eastern terminus of the Union Pacific Rail Road shall be and remain at said City of Omaha.

Third: That after its Missouri River Bridge at the City of Omaha is completed and ready for use, the said Union Pacific Rail road Company will make up all its reg-

ular west bound passenger and freight trains on the grounds which the people and City of Omaha propose as above to deed to said Union Pacific Rail road Company, and as is already mapped and platted.

That is to say, All passengers and freights coming from the east on all lines of road seeking a connection with said Union Pacific Rail road at its eastern terminus, shall be delivered and transferred to the Union Pacific Rail road Company upon said depot grounds where the Union Pacific trains shall be made up for the west and that said party of the first part will, after such bridge completion transfer upon said grounds to the various rail roads that do or may begin or end in Council Bluffs or Omaha all its passengers, baggage, express matter, mails and freight north, east or south bound.

Fourth: That said Union Pacific Rail road company will within one year from the date hereof, expend in improvements in the building of passenger and freight depots, general passenger and freight offices, Land offices and transfer and telegraph offices upon said grounds, a sum that shall not be less than one hundred thousand dollars, and to maintain these buildings and offices thereon.

Fifth: All machine, car shops and other manufactories required for the use of said Company at its eastern terminus, all permanent offices of the Company required for the transaction of its business, including the land department, general Superintendents' office, General Passenger and Freight Offices Ware houses for the Company's use &c. shall be erected and maintained at Omaha.

Sixth: That under proper rules for their regulations to be prescribed by said party of the first part the trains cars and engines of all rail roads now or hereafter running into or out of Omaha and Council Bluffs shall have unobstructed access and transit to and over said bridge and its approaches and such roads shall have the right to take or cause to be taken their trains, cars and engines with their freight and passengers over and across said bridge and its approaches at reasonable compensation without discrimination, hindrances, preference or delay, provided, however, that the Union Pacific Rail road company shall in all cases have the option of substituting its own engines for those of such other roads in the operating of its said Bridge receiving reasonable compensation therefor.

The object of this clause being to make a virtual and operating connection upon said transfer grounds, between all the rail roads desiring such connection which do or may begin or end in or pass through Omaha or Council Bluffs and the trains and business of said roads. In Witness whereof, the said party of the first part has caused these presents to be executed in triplicate by its Vice President hereby binding said Union Pacific Railroad Company, and its successors to the covenants and agreements herein contained, and the parties of the second part by their authorized officers have hereunto set their hands in triplicate the day and year first above written."

Which said contract was duly executed and delivered by the triplicate parties thereto.

Now therefore in consideration of the premises and the sum of One Dollar in hand paid, the receipt of which is hereby acknowledged, the said party of the first part does hereby grant, sell and convey unto the said party of the second part and to its successors the following described real estate situate in the City of Omaha County of Douglas and State is of Nebraska, and bounded and described as follows; that to say: Lots six and seven in Block two hundred and one; Lots five six, seven and eight in block two hundred and two: Lots five, six, seven and eight in block two hundred and four. Lots five, six and seven in block two hundred and fifteen: Lots five, six, seven and eight in block two hundred and sixteen; lots one, two, three, four, five, six, seven and eight in block two hundred and seventeen: Lots one, two, three, four, five, six, seven and eight in block two hundred and eighteen; lots one, two, three, four, and eight in block two hundred and nineteen; lots three and four in block two hundred and twenty three; Lot seven and all that part of lot eight not heretofore conveyed to said Rail road Company in Block two hundred and twenty-four; the undivided one-half of lot eight in block two hundred and twenty-six; lot four in block two hundred and twenty seven; lot one in block two hundred and thirty-four; lots one, two, three, four and the South eighty-seven feet of lot eight in block two hundred and thirty-five Lots two, four, five, six and seven in block two hundred and thirty six.

Also the following described fractional parts of certain other lots, in said City of Omaha, being those parts

of the same embraced within the lines of said depot, and transfer grounds, and grounds for right of way, as shown upon the plat of said grounds on file in the office of the Probate Judge of said County of Douglas the same as conveyed to me as hereinbefore set forth and being the approximate area in square feet off from each of such lots as here described that is to say; the southerly forty six hundred and twenty square feet of lot five and the southerly seventy five hundred and ninety square feet of lot eight in block two hundred and one, the southerly sixty-six hundred and ninety-nine square feet of lot five, the southerly fifty-seven hundred and seventy-five square feet of lot six. The southerly forty-five hundred and fifty four square feet of lot seven and the southerly twenty nine hundred and four square feet of lot eight in block two hundred and three. The southerly thirteen hundred and eighty six square feet of lot two, and the southerly twenty seven hundred and six square feeet of lot three in block two hundred and four, the Southerly twenty-five hundred and eight square feet of lot eight in block two hundred and five; the northerly thirty three hundred square feet of lot five, the northerly forty-six hundred and twenty square feet of lot six and the northerly fifty-nine hundred and forty square feet of lot seven in Block two hundred and nineteen; the northerly Eleven hundred and fifty-five square feet of lot four in block two hundred and twenty-two; the northerly fifty-six hundred and ten square feet of lot one in block two hundred and twenty-three; the northerly fifty-six hundred and ten square feet of lot two, the northerly forty-one hundred and ninety-one square feet of lot three, and the northerly twenty-seven hundred and six square feet of lot four in block two hundred and thirty-four, the northerly six hundred and sixty square feet of lot five, the northerly twenty-three hundred and ten square feet of lot six and the northerly forty-four hundred and fifty-five square feet of lot seven in block two hundred and thirty-five also a tract of land bounded and described as follows, commencing at a point three hundred and forty six feet north of the South west corner of lot four in section twenty three in township fifteen, north of range thirteen, east of the sixth Principal Meridian and running thence north fifty feet thence east four hundred and ten feet

thence south fifty feet and thence west four hundred and ten feet to the place of beginning; also the south half of the following tract of land bounded as follows, to-wit:

Commencing at a point thirty-two rods north of the south west corner of fractional lot four, in section twenty-three in Township fifteen north of range thirteen east of the sixth principal meridian, thence south along the west line of said lot one hundred and thirty two feet thence east one hundred and ninety eight feet thence north one hundred and thirty two feet thence west one hundred and ninety eight feet to the place of beginning, the same being in section twenty three in said township and range hereby limiting the use of all said premises to the legitimate purpose of depot and transfer grounds and grounds for right of way and approaches to the said Missouri river bridge, subject to the conditions and restrictions contained in the contract above recited and provided further, that in case said premises or any part thereof be abandoned or disused or converted to any other than the uses and purposes hereinbefore limited, then the same shall revert to and become the property of the said City of Omaha.

In testimony whereof the party of the first part has hereunto set his hand the day and year first above written.

Alvin Saunders,
Trustee.

In presence of
W. B. Bend,
A. J. Poppleton.

State of New York, } ss.
County of New York. }

On this twenty-sixth day of January, 1872, before me, a Notary Public in and for said County, personally appeared Alvin Saunders, trustee, to me personally known to be the identical person whose name is subscribed to the foregoing instrument as grantor, and he acknowledged the execution thereof to be his voluntary act and deed as such trustee.

Witness my hand and notarial seal the date aforesaid.

W. B. Bend,
[SEAL] Notary Public.

Recorded February 2nd, 1872, at 2¼ o'clock p. m.

Wm. H. Ijams,
County Clerk.

The State of Nebraska, } ss.
County of Douglas. }

I, T. A. Megeath, register of deeds in and for said county, in the state aforesaid, do hereby certify that I have compared the above and foregoing instrument as it appears of record in the office of said Register of Deeds in Book No. 12 of Deeds, page 220, and that the same is a full and correct copy thereof.

In testimony whereof I have hereunto set my hand and affixed my seal of office this 6th day of January A. D. 1891.

T. A. Megeath,
Register of Deeds.
By W. R. English,
Deputy.

[SEAL]

Upon reading the foregoing amended petition and probable cause being shown it is ordered that a temporary restraining order be and the same is hereby allowed as prayed for in the petition until the further order of the court upon the plaintiffs giving an undertaking with surety in the sum of $1000.00.

It is further ordered that the motion for a temporary injunction be set for hearing January 10th, 1891, at 10:30 A. M. at the court house of Douglas County, Nebraska.

Geo. W. Doane,
Judge.

Jan 6, 1891.

Afterward, on the 7th day of January, 1891, Bond was filed herein, which said Bond is in the words and figures following, to-wit:

Bond.

WHEREAS, in an action pending in the District Court of the State of Nebraska, within and for the County of Douglas in said state, wherein Ernest Stuht and John D. Howe are plaintiffs and The City of Omaha, Richard S. Cushing, its mayor, Charles S. Goodrich, the City Comptroller, The Omaha Depot Company of Omaha, Alvin Saunders, Thomas L. Kimball, President of said Union Depot Company, Thomas H. Benton, defendants, the plaintiffs have obtained an order of injunction against said defendants upon their giving an undertaking in the sum of $1000.00.

Now therefore we, Ernest Stuht as principal and Joseph Barker as sureties, hereby undertake to the said City of Omaha, Richard C. Cushing, its mayor, Charles S. Goodrich, the City Comptroller, the Omaha Union Depot Company of Omaha, Alvin Saunders, Thomas L. Kimball, president of said Omaha Union Depot Company, Thomas H. Benton defendants in the sum of $1000.00 that the said Ernest Stuht and the said John D. Howe plaintiff shall pay to the defendant all damages which they may sustain by reason of said injunction, if it be finally decided that the injunction ought not to have been granted.

Dated this 6th day of January A. D. 1891.

Ernest Stuht,
Joseph Barker.

I hereby approve of the above undertaking and the surety thereon this 6th day of January, 1891.

Frank E. Moores,
Clerk District Court,
Douglas County, Nebraska.

Afterward, on the 10th day of January, 1891, Answer of Omaha Union Depot Co. was filed herein, which said Answer is in the words and figures following, to-wit:

Answer of Union Depot Company.

State of Nebraska, } ss
Douglas County. }

In District Court.

Ernest Stuht and John D. Howe,
Plaintiffs,
vs
The City of Omaha, Richard C. Cushing, its mayor, Charles S. Goodrich, its City Comptroller, the Omaha Union Depot Company, (of Omaha,) Alvin Saunders and Thomas L. Kimball, President of said Union Depot Company, Thomas H. Benton,
Defendants.

Answer of the Omaha Union Depot Company to the Amended Petition.

The Omaha Union Depot Company, impleaded with others as defendant in the above entitled cause, appearing for itself and for none others of said defendants, for answer to the amended petition filed herein, says:

1. It denies each and every allegation in said petition contained, except as hereinafter qualified, explained, or expressly admitted.

2. Further answering defendant says, it admits that the said city of Omaha is a municipal corporation existing under the laws of the state of Nebraska, and that it is of the metropolitan class. It admits that Richard C. Cushing, one of the defendants, is its duly elected and qualified Mayor, and that Charles S. Goodrich is its duly elected and qualified comptroller. It further admits that this defendant is a corporation created and existing under the laws of Nebraska, having its principal office in the city of Omaha. It further admits that Thomas L. Kimball is its President, and it further admits that Thomas H. Benton is Auditor of Public Accounts of the state of Nebraska.

3. Defendant further answering, admits that on the 30th day of October, 1889, the City Council passed an ordinance submitting to the electors of said city of Omaha, a proposition, a copy of which is attached to said amended petition, and with respect thereto alleges that all necessary preliminary steps were taken and all legal action had as to passing said ordinance and submitting said proposition, in strict accordance with the laws of the State of Nebraska; and it alleges that said proposition was lawfully and legally submitted to the said electors of Omaha, at an election held on the 28th day of November, 1889, in strict accordance with the laws of said state; and it alleges the fact to be that the same was duly and legally adopted by the electors of said city in accordance with law.

4. Defendant further answering, says that the Mayor and Council of said city were duly authorized by the laws of the state of Nebraska to enact said ordinance, and to submit said proposition to said electors at the time as aforesaid; and it alleges the fact to be that said proposition was adopted by the electors of said city, and the said city was thereby fully and completely bound by the terms and conditions thereof. And defendant further answering, says that the bonds provided for in said proposition

were duly authorized by said ordinance, for the purposes and upon the conditions set forth in said ordinance, and for no other purpose and upon no other conditions; and it denies that they were authorized or have been issued, or will be delivered for the purpose of aiding in the construction of a viaduct across Tenth street referred to in the petition. And defendant further alleges that it is a corporation duly organized as a depot and railway company in accordance with the laws of the state of Nebraska enacted in that behalf, and that the object of the voting and issuance of said bonds was to aid this defendant in the construction of a work of internal improvement as specified in said ordinance and for no other purpose; and defendant says that it is engaged in the construction of said works of internal improvement as provided for in said ordinance.

5. Defendant further answering, denies as alleged in said petition, that said Union depot, including its buildings, tracks and appurtenances, is to be erected, constructed and maintained as a private venture or investment for speculative purposes only; and it alleges the fact to be, that it is to be constructed and used for the purposes specified in the laws of the state of Nebraska authorizing the incorporation of this defendant, and for the benefit of the traveling public and especially for the benefit of the people of the city of Omaha.

6. Defendant further answering says, that it has up to the present time in every respect and particular, complied strictly with the terms and conditions of the said ordinance constituting the contract between it and the city of Omaha; it alleges that acting upon the faith of the validity and binding obligation of said contract contained in the said proposition as so ratified and approved by the electors of the said city of Omaha, it has provided for the erection of a union depot, together with all the necessary tracks and appurtenances in the city of Omaha, as specified in said ordinance, and for that purpose has up to the present time expended in and about the construction of the said Union Depot and appurtenances thereto, the sum of more than one hundred and fifty thousand dollars, and in that respect has fully complied with the terms of the said ordinance and proposition.

7. Defendant further answering, says that it has in

every respect complied with the terms and conditions of said ordinance; it alleges the fact to be that it is now ready and willing to comply in the strictest particular with all of the terms and conditions of the said ordinance, and is ready as provided in said ordinance to tender to the city of Omaha each of the said several bonds executed in accordance with the terms of said proposition by the union depot company, by the Chicago, Burlington and Quincy Railroad Company, and by the Union Pacific Railway Company. It alleges the fact to be that said bonds have long since been duly prepared; that they were submitted to the proper legal authorities of the city of Omaha and have been duly approved as to form and execution by the same; that the same are now in the possession of this defendant, and that it is prepared to deliver the same to the city of Omaha, in strict accordance with the terms and conditions of said ordinance.

8. Defendant further says that as to all of the allegations in said petition contained as to the character of the title to the lands described therein as heretofore vested in the Union Pacific Railway Company, it denies the allegations of the petition in that respect, except so far that it admits the purchase and conveyance to the said Union Pacific Railway Company of the said property, and it alleges the fact to be that all of the terms and conditions of said purchase and conveyance have been fully complied with by the said Union Pacific Railway Company.

9. Defendant further says that the said bonds of the city of Omaha as provided for in said ordinance and proposition, have been duly issued and executed by the proper officers of the city of Omaha, and have been duly recorded and certified to by the Auditor and Secretary of the state of Nebraska as provided by law, and the same are issued in strict conformity to the laws of the state of Nebraska, and are legal and binding obligations upon the said city. That the same are now in the hands of the said city, ready to deliver to the trustee provided for in the said ordinance and proposition, in accordance with the terms thereof.

10. Defendant further says that the viaduct referred to in the said proposition has been fully and completely erected and constructed, and turned over to the use of the public and to said city, in strict accordance with the terms

of said ordinance and proposition; that all of the other conditions contained in said ordinance and proposition have been complied with fully and perfectly by this defendant; and defendant says it is now ready and hereby offers in accordance with the terms of said ordinance and proposition, to tender and deliver to the said city of Omaha the two several bonds, each in the sum of two hundred thousand dollars, conditioned and executed as provided for in said ordinance and proposition, to the city of Omaha. It further alleges the fact to be that the depot which it has already partially constructed, is in accordance with the terms and conditions of said ordinance, and is a building of a very much finer character, and much more expensive in construction, and will be much more desirable and valuable for the uses of the Union Depot and for the city of Omaha, than the one shown by the sketch referred to in the plaintiff's amended petition. Plaintiff further says that the plans for said depot and its character and cost, have all been duly approved by the city of Omaha in accordance with the terms of said ordinance and proposition.

11. Defendant further answering, says that said proposition was duly ratified and approved by the electors of the city of Omaha, on the 28th day of November, 1889, and that from said day up, to the commencement of this action, the people of the city of Omaha have been daily and constantly advised that this defendant was proceeding with the performance of all of the terms and conditions of said ordinance, and that it was expending from time to time, very large sums of money in order to comply with the terms and conditions thereof, and that it has expended on the strength and in the belief that the terms and conditions of said ordinance and proposition would be fairly executed and performed by said city of Omaha, very large sums of money, which it would not have expended had it not relied upon the good faith of the said city of Omaha.

12. Defendant further answering says that in order to enable it to construct and maintain a union railway passenger depot in said city of Omaha as provided for in said ordinance it is absolutely necessary for it to secure the title to the ground described in said petition, on which its said depot is already partially constructed, in order that it may be enabled to raise money thereon to

enable it to proceed with the construction of said depot, by the issue of bonds secured by a mortgage on the said property; that until its title to the lands in question is confirmed by the execution of the conveyances described in said ordinance, it is unable to raise money to proceed with the construction of its said depot, and it will be compelled to abandon the construction of the same. Defendant further denies that the Union Pacific Railway Company has refused to permit any trains to be run across its bridge or to the said union passenger station in accordance with the terms of said ordinance, and it alleges the fact to be that said Union Pacific Railway Company is ready and willing, and at all times hereafter will be ready and willing to permit all railway companies to cross its bridge with their said trains, and to make connection with the depot facilities of this defendant in strict accordance with the terms of said ordinance.

Defendant now represents to the court that it is ready and hereby proffers strict performance of all the terms and conditions of the contract between it and the city of Omaha, as evidenced by the said ordinance and proposition, and by the proceedings had thereunder; that it will proceed with the erection and construction of a magnificent passenger depot in this city; that it will secure the permission of the Union Pacific Railway Company and of all other connecting lines for the entry of all passenger trains of all roads centering at Omaha or at Council Bluffs, into the said passenger station, and that it will maintain the same so that it will be a credit and great benefit to the people of the city of Omaha, if the city on its part carries out or is permitted to carry out the conditions and obligations contained in the said ordinance and proposition; but it submits to the court, that if this injunction is to be maintained against it, it will be compelled to stop the further construction of the said Union Depot, to abandon its organization as a depot company, and to permit the premises set apart for the uses and purposes of a union depot and railway company, in said city to revert to the original owners thereof, whereby the people of the said city of Omaha will be prevented for many years to come from having a union passenger station in said city, and whereby all connecting Iowa roads will be excluded from participation or enjoy-

ment in the privileges and benefits of a union railway station in the city of Omaha; and it submits to the court that the question as to whether or not there shall be in the city of Omaha a union railway and passenger station as provided for in said ordinance and proposition, and as to whether or not all other roads shall be permitted to enter the same with their passenger trains, thereby conferring great and incalculable benefit upon the people of Omaha, and contributing largely to the growth of the city, and the great enhancement of its property, depends entirely upon the decision of the court in this case. If this injunction shall be promptly and speedily denied, the defendant will proceed in strict accordance with law and the terms and conditions of said ordinance and proposition to comply with all the terms thereof on its part to be performed, and it only asks that the said bonds of the said city of Omaha be delivered and transferred by the proper officers of the said city, when the defendant has strictly complied with the conditions precedent to said delivery of said bonds, as set forth in said petition.

Wherefore defendant asks that the injunction in this case be dissolved, and that the plaintiff's cause of action be dismissed with costs of suit.

The Omaha Union Depot Company,
By Thos. L. Kimball,
Its President.

State of Nebraska, } ss
Douglas County. }

Thomas L. Kimball, being first duly sworn, says that he is President of the Omaha Union Depot Company, and as such is its chief officer; that said defendant is a corporation. Affiant further says that he knows the facts contained in the foregoing answer, and that the same are true.

Signed in my presence and sworn to before me, this —day of January, 1991.

[SEAL] L. S. Wilson,
Notary Public.

Afterward, at Chambers, and on the 10th day of January, 1891, an Order was entered herein, as follows, to-wit:

Order.

Ernest Stuht & John D. Howe,
vs
City of Omaha, et al.

On motion of plaintiff, hearing of application for temporary injunction is hereby continued to January 16, 1891, 10 A. M.

Jan. 10, 1891.

Joseph R. Clarkson,
Judge.

Afterward, on the 10th day of January, 1891, Demurrer was filed herein, which said Demurrer is in the words and figures following, to-wit:

State of Nebraska, } ss
Douglas County. }

In the District Court.

Demurrer.

Ernest Stuht and John D. Howe,
Plaintiffs.
vs.
Thomas L. Kimball, Impleaded with others.
Defendants.

DEMURRER TO AMENDED PETITION.

Now comes Thomas L. Kimball, one of the defendants in the above entitled cause, appearing for himself only, and for none of the other of said defendants, and demurs to the amended petition filed herein, for the reason that said petition does not contain any allegations or statements of facts constituting a cause of action against him, the said Thomas L. Kimball.

Wherefore defendant moves to be dismissed hence with his costs.

John M. Thurston,
Atty for deft. above named.

Afterward, on the 15th day of January, 1891, Stipution was filed herein, which said Stipulation is in the words and figures following, to-wit:

Stipulation.

In the District Court of the Third Judicial District for Douglas County, Nebraska.

Ernest Stuht, et al, Plaintiffs.
vs
The City of Omaha et al, Defendants.
} Stipulation.

It is hereby agreed between counsel of the parties in the above suit, that the hearing of application for an injunction may be postponed until Saturday, January 17th at 10 o'clock A.M. at which time the hearing shall be had; unless either of the parties interested shall desire further time in which case such further postponement shall be had as shall be agreeable to all parties and the court or Judge if the parties do not agree the Court or Judge shall decide.

Ernest Stuht et al, by Cowin & McHugh, Their Attorneys.

Interlineations by me & signed subject thereto.
John D. Howe, pro se.

Subject to consent of J. D. Howe, Cowin, The City of Omaha, et al, By their attorneys. The Union Depot Co. B. C. J. Green, its Atty.

Afterward, at Chambers, and on the 24th day of January, 1891, an Order was entered herein, as follows, to-wit:

Order.

Ernest Stuht, et al,
vs
The Union Depot Co. et al.
} 22–314

It is ordered that the defendants (except the City of Omaha) put on file their proof by Wednesday morning next at 12 M. that plaintiffs put on file their proof by Friday at noon; and that the hearing be set for Saturday morning next at 10 o'clock unless the City shall show good grounds for further postponement and that the restraining order heretofore allowed be continued in force till further order.

Jan. 24, 1891.

Geo. W. Doane,
Judge.

Afterward, on the 31st day of January, 1891, Answer was filed herein, which said Answer is in the words and figures following, to-wit:

Answer.

DISTRICT COURT, DOUGLAS COUNTY, NEBRASKA.

Ernest Stuht and John D. Howe, Plaintiffs,
vs
The City of Omaha; Richard C. Cushing, its Mayor; Charles S. Goodrich, its city Comptroller; the Omaha Union Depot Company; Alvin Saunders; Thomas L. Kimball, President of said Omaha Union Depot Company and Thomas H. Benton, Defendants.

ANSWER.

Now come the said defendants, the city of Omaha, Richard C. Cushing, Its Mayor, and Charles S. Goodrich, its city comptroller, and Alvin Saunders, and for answer to the amended petition of the plaintiffs, herein filed, say:

That they have no knowledge or information sufficient to form a belief as to whether the plaintiffs are citizens and tax payers in the city of Omaha, in said county, or that they own real estate therein subject to taxation by said city for the purpose of paying interest and principal upon the bonds mentioned in plaintiffs petition, or that they bring this suit on behalf of other citizens and tax payers of said city, and they therefore deny each of the said several allegations and refer the plaintiffs to such proof thereof as they may be able to produce.

Defendants further answering say they admit the city of Omaha is a municipal corporation, that Richard C. Cushing is its mayor, that Charles S. Goodrich is its comptroller, and that Alvin Saunders is a resident and inhabitant of said city.

Defendants further answering say they admit that on the 30th day of October, 1889, the city council passed an ordinance numbered 2289, which was afterward signed

and approved by the mayor of said city, and thereby took effect as stated in plaintiff's petition, and that afterwards about the same date the mayor issued his proclamation calling a special election to vote upon the questions proposed in said ordinance in the manner provided for in said ordinance at a special election to be held on the 28th day of November, 1889, but whether the said 28th day of November, 1889, was Thanksgiving Day, as designated and appointed by the President of the United States and the Governor of Nebraska defendants are not now able to state, and they therefore deny said allegation and refer the plaintiffs to such proof thereof as they may be able to produce.

Defendants admit that during the same year the city election was held on the 3rd day of December, 1889, it being the time appointed by the charter for cities of the metropolitan class for holding such city election, but defendants deny that the election held on the 28th day of November was so held for the reason that it was believed that the voters of the city would not generally attend the polls and vote at said election, but for what precise reason the said election was appointed to be held on the said 28th day of November defendants are not now able to state, and defendants state the truth to be that said ordinance was lawfully passed, that said proclamation was lawfully issued, and that the mayor and council of said city had full lawful power and authority to pass said ordinance and to submit the questions therein contained to the electors of said city to be voted on by them, and that the legality or validity of said ordinance, or said election, did not in any manner depend upon the validity or legality of the bonds provided for by said ordinance and voted for in pursuance of the terms of said proclamation, but that the validity and legality of said bonds rests and depends wholly upon the constitution of the State and laws passed in pursuance thereof, and that the courts alone, and not the mayor and council are authorized to determine and have power to determine the question of the validity of the bonds in said ordinance and in said proposition described.

Defendants further answering say that they are advised and believe that the Omaha Union Depot Company is a corporation organized and existing under the laws of

the State of Nebraska and formed for the purpose of building a union depot station in the city of Omaha to be used by all roads which will consent to come into it and which may be permitted to come into it by said union depot company, and said ordinance was passed and said proposition submitted upon the then fixed and current belief and understanding that said union depot was a work of internal improvement in aid of which said bonds (under the constitution and laws of the State of Nebraska) could be lawfully issued, and defendants deny that the city council passing said ordinance and that the then incumbent mayor who signed and approved the same did so at the instance and request of the Union Pacific Railway Company and the Chicago, Burlington & Quincy Railroad Company, or that they conspired or colluded with said companies to cast upon the tax payers of said city the cost of the viaduct along Tenth street for the purpose of evading and defeating the law and permitting a fraud upon the law and upon the tax payers and citizens, but on the contrary defendants allege and believe the truth to be that the members of said council and the said mayor acted in good faith in passing said ordinance and in submitting said proclamation and holding said election, and canvassing the votes cast thereat, and that their action was at the time in harmony with the general public sentiment of the city, and that the arrangement made by the city council and by said mayor, as expressed and set forth in said ordinance and in said proclamation, were believed by them, and by the people of said city, to be advantageous and beneficial to said city, and that it was for the interest of all property owners resident in said city that the same should be adopted at said election and carried into effect in good faith, and defendants submit to the court the question whether said ordinance and said proclamation, and the acts done and performed under the same, were valid and legal, and also whether the said Union Depot station (as planned and to be constructed, as set forth in said instruments) is a work of internal improvement, in aid of which the city can lawfully donate its coupon bonds, as in said ordinance and proclamation provided.

Defendants further deny that if (as charged by the said plaintiffs in their said amended petition) the said

bonds are void for lack of power in the city council and mayor to issue the same by reason of the fact either that the said union depot is not a work of internal improvement or that the same are issued in excess of the limit allowed by law and the provision of the charter of cities of the metropolitan class in respect thereto, that said bonds will become valid in the hands of purchasers, for value, without notice, but, on the contrary, allege the truth to be that all parties (purchasers or otherwise) receiving said bonds, are chargable with notice of any want of power in the mayor and council to issue the same, as well as with notice of the record of the amount of bonds already issued by said city and outstanding under the provisions of the charter for cities of the metropolitan class and that if said bonds should be declared void, for either of the foregoing reasons, they are alike void into whatsoever hands they may come.

Defendants further answering say that the ordinance and proposition hereinbefore referred to submitted to the electors of the city of Omaha (which said proposition was duly and lawfully declared carried by the requisite majority of the voters of said city) in the particulars material to the matters in controversy, were as follows:

The city of Omaha undertook to issue $150,000 of its coupon bonds to the Union Depot Company, to aid it in the construction of a union passenger railway station and its railroad tracks, side tracks, turnouts, switches, offices, structures and approaches leading thereto necessary to the proper use and enjoyment thereof as a union railway passenger depot at the city of Omaha, and upon grounds situated between Pacific street and Leavenworth street and 5th street and 13th street; such depot was to be built of the size and substantially of the general appearance shown by sketch on file in the office of the city clerk of the city of Omaha, and said viaduct on 10th street was to be built substantially in accordance with the plans and specifications thereof, which (prior to the submission of said proposition) had received the approval of the mayor and city council and of the board of public works of said city. Said bonds were to be issued in the denomination of $1,000 each; to be made payable to bearer; dated on the 1st day of January, 1890, and become due 20 years from date thereof, with annual interest, after January 1, 1891, at

the rate of five per cent per annum; interest and principal payable at the fiscal agency of the city of Omaha in the city of New York, to-wit, the banking firm of Kountze Brothers. Said proposition also provided for the levy of a tax for the purpose of paying the interest on said bonds and providing for a sinking fund for the ultimate redemption of the same; said proposition further provided that said bonds should not be issued by the city of Omaha until there had been executed and delivered to the city of Omaha two certain bonds: 1st, a bond in writing of the Omaha Union Depot Company in the sum of $200,000, liquidated damages, to be signed, as surety, by the Union Pacific Railway Company and the Chicago, Burlington & Quincy Railroad Co., conditioned that the Union Depot Company would build and maintain said union depot station in the manner and according to the plans and specifications thereof hereinbefore referred to; that the viaduct over 10th street should be completed by January 1, 1891, and said union depot station to be opened for use before January 1, 1892, unless the construction of said viaduct or said station, or either of them, should be delayed by a strike or strikes, or by injunctions or other judicial proceedings. Said bond was also to be further conditioned that any and all railroad companies that might desire the privilege should have the right to run passenger trains into and from said union depot upon just and equitable terms to be agreed upon between the said Union Depot Company and the railroad Company making application therefor, and in case terms could not be agreed upon then said proposition provided for arbitrators to settle such equitable terms. The other of said bonds (which were to be executed and delivered as a condition precedent to the delivery of said bonds of the city of Omaha) was the written bond of the Union Pacific Railway Company, in like sum and in like liquidated damages, conditioned that all railroad companies that might desire the privilege have the right to run their passenger trains over the Missouri river bridge and approaches thereto, of the Union Pacific Railway Company, using therefor its tracks from the union transfer at Council Bluffs, Iowa, to and from said Omaha Union Depot, upon just and equitable terms, to be agreed upon between the parties or in case of disagreement, such terms and the compensation

for such use to be settled by arbitration, as provided for in said proposition.

Defendants further answering say that on the 28th of December, 1889, the mayor and city council of the city of Omaha passed and approved an ordinance authorizing and instructing the mayor of the city of Omaha to convey to the Omaha Union Depot Company, a corporation of the state of Nebraska whose certificate of organization was filed in the office of the Secretary of State on August 15, 1889, all the right, title and interest of said city in and to certain depot grounds in the city of Omaha, which said depot grounds are identical with those described in a certain deed from Alvin Saunders, trustee, to the Union Pacific Railroad Company on the 20th day of January, A. D. 1872, which said ordinance was approved on the 6th day of January, 1890, and which authorized and directed the mayor of the city of Omaha to execute and deliver a conveyance to the said Union Depot Company of the premises described in the said conveyance from Alvin Saunders, trustee, to the Union Pacific Railroad Company, dated January 20, 1872, and all the interest of the city of Omaha therein, upon the like and identical conditions hereinbefore recited as being those upon which the said coupon bonds of the city of Omaha were to be issued and delivered.

Defendants further answering say that on the 12th day of November, 1889, the mayor and council of the city of Omaha passed a certain ordinance entitled "An ordinance authorizing and directing the mayor of the city of Omaha and Alvin Saunders, trustee, to convey to the Union Pacific Railway Company, all the right, title and interest of said city in and to certain depot grounds in the city of Omaha, which said ordinance was duly approved by the mayor of said city on the 13th day of November, 1889, which said ordinance directed Alvin Saunders, in the second section thereof, to convey to the Union Pacific Railway Company, lot 3 in block 236, at the same time and upon the same conditions hereinbefore recited as being those upon which the said $150,000 of bonds of the city of Omaha were to be delivered to said Union Depot Company.

And defendants further answering say that the said bond of the Union Depot Company with the Union Pacific

Railway Company and the Chicago, Burlington & Quincy Railroad Company, as sureties, hereinbefore mentioned, and the bond of the Union Pacific Railway Company, hereinbefore mentioned and also the deed of the city of Omaha to the Union Pacific Railway Company of the premises described in the deed executed by Alvin Saunders to the Union Pacific Railroad Company, dated January 20, 1872, and also the deed of Alvin Saunders, trustee to the Union Pacific Railway Company of the lot described in said ordinance of the city of Omaha, as hereinbefore set forth have each and all of them been duly prepared and the said bonds signed by the several railway companies and the Union Depot Company and the said deed of Alvin Saunders, trustee, executed and acknowledged by him, and the said deed from the city of Omaha to the Union Pacific Railway Company has been prepared and is ready for execution by the mayor of the city of Omaha, and that the form and character of all the said several instruments have been approved by the city attorneys of the city of Omaha as being a compliance with the provisions of said several ordinances and the proclamation hereinbefore referred to, and declared ready for delivery and deliverable to the respective parties, as stipulated, and that the said $150,000 of coupon bonds of the city of Omaha, as hereinbefore set forth and described, have been prepared and executed by the proper city officers; that the said city has caused the same to be registered in the office of the auditor and secretary of state as valid and lawful internal improvement bonds, issued in accordance with law, and that the said deeds to be delivered by Alvin Saunders and the city of Omaha are now in the hands of the mayor of said city ready for such delivery, and that the said bonds are now in the possession of the comptroller of said city ready for such delivery, and that the said bond of the said Omaha Union Depot Company with the said railway companies as surety, and the bond of the Union Pacific Railway Company, hereinbefore referred to are now in the possession of the Omaha Union Depot Company and of the said Union Pacific Railway Company ready for delivery.

And defendants further answering say that heretofore, to-wit, about the 1st day of December, 1890, the city council of the city of Omaha passed a concurrent resolution, which was afterwards approved by the mayor,

directing the exchange and delivery of said several instruments as in said ordinance hereinbefore recited stipulated and agreed, and the delivery of said $150,000 of coupon bonds to Kountze Brothers, bankers, of the city of New York, such resolution being passed upon the belief that all the conditions of said proclamation and of said ordinances had been complied with and that it was the duty of said city officers to make such exchanges and deliveries as hereinbefore and hereinafter set forth.

Defendants further answering say that by the terms of said ordinance and proclamation it was further provided that upon the execution and delivery of said bonds by said Union Depot Company and by the Union Pacific Railway Company, the mayor of said city was required to deposit said $150,000 of coupon bonds with the banking firm of Kountze Brothers of the city of New York to be by them delivered to the Omaha Union Depot Company on January 1, 1891, or as soon thereafter as they were presented with a certificate from the President of the Omaha Union Depot Company, attested by the mayor of the city of Omaha, to the effect that the viaduct in said proposition mentioned had been opened for use, and when not less than $150,000 shall have been expended on the construction of said union depot as evidenced by the vouchers and contracts for material therefor.

Defendants further answering say that they are advised and believe that upon the literal language and terms of said ordinance and said proclamation of the electors of the city of Omaha the said bonds and the said conveyances have become deliverable according to the terms thereof and that the same would have been previously delivered and exchanged according to the terms and conditions of said ordinances and proclamation, except that such delivery has been enjoined and restrained by the order of this court.

And defendants submit to the court whether upon the facts as hereinbefore set forth in this answer and the said several ordinances and proclamation the said coupon bonds and the said conveyances are deliverable as matter of law by the said defendants and the said city of Omaha, hereby declaring the readiness and willingness of said defendants to obey and execute whatever order, judgment or decree the court may make in the premises, and the de

fendants ask leave to produce before the court certified copies of said ordinance number 2289 and the proclamation of the mayor submitted to the electors of Omaha in pursuance thereof, and the said several ordinances directing the conveyance to the Union Pacific Railway Company by the City of Omaha and by Alvin Saunders of the premises hereinbefore set forth and described as to be conveyed by the said several parties, and the resolution of the city council of the city of Omaha providing for the delivery of said bonds to the banking firm of Kountze Brothers and the exchange of said conveyances and bonds, and make the said certified copies a part of this answer for greater certainty and detail in setting forth the terms and conditions upon which the action of said council in the premises has been based and marked exhibit A.

Defendants further answering say that the copy of the conveyance from Alvin Saunders, trustee, to the Union Pacific Railroad Company, bearing date the 20th day of January A. D. 1872, and attached to the plaintiffs amended petition as exhibit "B," defendants believe to be a true copy thereof.

And defendants submit to the court whether under and by virtue of the terms of said conveyance and trust of any character is raised on behalf of the city of Omaha, or whether the city of Omaha has or possesses under and by virtue of the terms of said deed any reversionary interest in said premises, and again, as heretofore declares the willingness and desire of defendants to submit to and execute such judgment and decree as the court may deem equitable and just.

Defendants further answering say they are advised and believe that up to the granting of the restraining order in this suit the said defendants have each and all complied with and kept every promise, obligation, stipulation or contract made in respect to the premises, and until and unless otherwise ordered or directed by the court or the city council of the city of Omaha have held and would continue to hold themselves in duty bound to comply with and carry out every such agreement, contract and stipulation in the premises so long as said Union Depot Company, Union Pacific Railway Company, and Chicago, Burlington & Quincy Company shall do likewise, unless prevented by legal process or expressly instructed by the

city council, and defendants submit that they ought not to be required further to act in the premises, without such order of the court or such express instructions of the city council, until the injunction herein asked shall be denied and the restraining order herein heretofore granted set aside.

Defendants further answering say that they deny each and every other allegation in said plaintiff's amended petition contained not hereinbefore or hereby confessed, avoided or denied.

Wherefore defendants pray that they may be hence dismissed with their costs of suit.

A. J. Poppleton,
Attorney for Defendants.

State of Nebraska, } ss
County of Douglas. }

Richard C. Cushing, being first duly sworn, says that he is the mayor of the city of Omaha, which is a municipal corporation and one of the defendants in the foregoing action; that he has read this answer and that the facts and things therein stated are true as he verily believes.

Richard C. Cushing.

Subscribed in my presence and sworn to before me this 30th day of January A. D. 1891.

[SEAL] Frank J. Sutcliffe,
Notary Public.

Afterward, at Chambers, and on the 31st day of January, 1891, an Order was entered herein, as follows, to-wit:

Order.

Ernest Stuht & John D. Howe,
vs
City of Omaha, et al. } ORDER Jan. 31, 1891.

Ordered that the defendants complete the filing of their proof by Monday night next, and the plaintiffs their rebuttal proofs by Tuesday night next & that this case be heard on Wednesday morning at 10 A. M. also that the preliminary restraining order be continued in force till the further order of the court.

Geo. W. Doane,
Judge.

Jan. 31, 1891.

Afterward, at the February term of Court and on the 21st day of March, 1891, an Order was entered herein, as follows, to:wit:

Order.

Ernest Stuht and John D. Howe, Plaintiffs,
vs
The City of Omaha et al. Defendants.
22-314 Order.

This cause having been heretofore argued and submitted to the Court, on motion of the plaintiff for a temporary injunction, was taken under advisement, and the Court does now here sustain said motion and restrain the defendants, their and each of their officers, agents, servants and attorneys as prayed in the amended petition herein, the plaintiffs to give bond in the sum of $1000. conditioned as by law required. Said injunction to remain in force till the final hearing. Said bond may be filed on or before Tuesday next, the present restraining order to continue in force till that time.

Afterward, on the 24th day of March, 1891, Bond was filed herein, which said Bond is in the words and figures following to-wit:

Bond.

In the District Court for Douglas County, Nebraska.

Ernest Stuht and John D. Howe, Plaintiffs,
vs.
The City of Omaha et al, Defendants.
Undertaking.

Know all men by these presents that we, Ernest Stuht and John D. Howe as principal and Charles H. Brown & George Smith surety are held and firmly bound unto the above named defendants in the penal sum of $1000.00 for the payment of which sum, well and truly to be made, we bind ourselves, our executors, administrators and assigns, firmly by these presents. Omaha March 21 1891.

The condition of the above bond is such that whereas said plaintiffs have procured from the District Court

aforesaid in the above entitled action an injunction as prayed by the petition, they to give bond in said sum conditioned as by law provided, now, therefore, if said plaintiffs shall pay said defendants all damages they may sustain by reason of said injunction in case it shall be finally decided that it ought not to have been granted, then said obligation to be void; otherwise to be and remain in full force and effect.

John D. Howe, Ernest Stuht,
Charles H. Brown, Geo. Smith.

I hereby approve the within bond and the sufficiency of the surety thereon this 24th day of March, 1891.

Frank E. Moores,
Clerk District Court,
Douglas Co., Neb.

Afterward, on the 19th day of October, 1891, Reply to answer of Omaha Union Depot Company was filed herein, which said answer is in the words and figures following, to-wit:

Reply to answer of Omaha Union Depot Company.

In District Court for Douglas County, Nebraska.

Ernest Stuht, et al., Plaintiffs,
vs.
The City of Omaha, et al., Defendants.
} Reply to answer of the Depot Company,

For reply to the answer of the Omaha Union Depot Company plaintiffs deny that the proposition in question was legally submitted to or adopted by the electors of said city and deny that said bonds were voted for, or were intended to be applied to the construction of a work of internal improvement; plaintiffs deny that said company has complied with the terms of said ordinance and all other allegations in the sixth and seventh paragraphs of said answer; plaintiffs also deny that all the terms and conditions of the alleged purchase and conveyance of the ground have been fully complied with by said Union Pacific Railway Company, as alleged in paragraph eight of said answer; plaintiffs also deny the allegations of the ninth paragraph, and also that the Depot that has been partially con-

structed is in accordance with the proposition and contract in question or that it is a building of finer character or more expensive or more desirable; and also deny the allegations of paragraphs eleventh and twelfth.

Wherefore plaintiffs pray as in and by their amended petition they have already prayed.

John D. Howe,
for Stuht and himself.

State of Nebraska, } ss.
County of Douglas. }

John D. Howe, being first duly sworn deposes and says; that he is one of said plaintiffs and that the facts set forth in the above reply are true as he believes.

John D. Howe.

Subscribed in my presence and sworn to before me this 19th day of October, 1891.

[SEAL] Wm. B. Ten Eyck,
Notary Public.

Afterward, on the 21st day of October, 1891, Stipulation was filed herein, which said Stipulation is in the words and figures following, to-wit:

Stipulation.

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA.

Ernest Stuht, et al,
vs
City of Omaha, et al. } STIPULATION.

It is hereby stipulated between the above named parties that the above entitled cause shall not be called for hearing, or trial before the 1st of November next.

John D. Howe,
Attorney for Plaintiff.
C. J. Greene,
Attorney for Defendant.

Afterward, on the 24th day of September, 1892, Motion was filed herein, which said Motion is in the words and figures following, to-wit:

Motion.

In District Court of Douglas County, Neb.

E. Stuht, et al,
vs
City of Omaha, et al.

Motion to set time for hearing of case.

Comes now the plaintiff above named and shows to the Court that the preliminary injunction granted herein was granted by his Honor Judge Doane for which reason his Honor Judge Irvine on whose docket the case was placed, has ordered that it be transferred to the trial docket of Judge Doane.

The plaintiff therefore moves that his Honor Judge Doane assign the case for trial at some date which will give the parties reasonable time to procure witnesses and prepare for trial.

John D. Howe,
pro se.

Afterward, on the 3rd day of January, 1893, Motion was filed herein, which said Motion is in the words and figures following, to-wit:

In the District Court, Douglas County, State of Nebraska.

Motion.

Ernest Stuht and John D. Howe.
Plaintiffs,
vs.
The City of Omaha, et al.,
Defendants.

Motion to Modify Restraining Order.

And now comes the City of Omaha, by W. J. Connell, City Attorney, and moves the Court to so modify the restraining order made and entered herein as to permit and allow the said defendant, the City of Omaha, by its City Council and Mayor to pass and approve the proposed ordinance and execute the proposed conveyances, in accordance with the printed report hereto attached and in support of this motion and as a part thereof the said defendant refers to the affidavit hereto attached, and also to the said notice and to the proposed ordinance, which is also hereto attached.

The City of Omaha,
By W. J. Connell,
City Attorney.

State of Nebraska, } ss.
Douglas County. }

W. J. Connell being duly sworn says he is the City Attorney of the City of Omaha, and of his personal knowledge knows that the printed report hereto attached, dated October 11th, 1892, was duly made by the Special Committee of the City Council, the City Attorney and City Engineer, as shown by said report, and that the same was duly adopted by the City Council.

Affiant further says that for the purpose of carrying into effect the settlement proposed by such report, an ordinance was prepared and submitted to the City Council, which has been fully considered by said City Council sitting as a Committee of the Whole, at which sitting of the City Council a large number of citizens of Omaha were present in pursuance of the notice of such meeting signed by the City Clerk, which is hereto attached.

Affiant further says that after considering all objections to the proposed settlement, the said Committee by a vote of 10 to 3 reported said ordinance to the City Council and recommended that the same with certain amendments do pass.

Affiant further says that said ordinance with said amendments now stands for third and final reading, but for the reason that affiant has advised the City Council that the passage of said ordinance might be in violation of the pending order of injunction in this case, no vote or final action has been taken thereon.

Affiant further says that he has been directed by said City Council to make this application and now submits the same, with the papers hereto attached for the consideration and action of this Honorable Court.

W. J. Connell.

Subscribed in my presence and sworn to before me this 28th day of December, 1892.

John Q. Burgner,
[SEAL] Notary Public.

SUNDAY, DECEMBER 25, 1892. SIXTEEN PAGES.

NOTICE.

The citizens of Omaha are hereby invited to attend a meeting of the city council Monday, December 26th, 1892,

at 2 o'clock p. m. to express themselves on the ordinance now pending before the council for the settlement of the differences between the city of Omaha and the Union Depot company and the Union Pacific Railway company.

John Groves,
City Clerk.

CITY OF OMAHA.

Council Chamber, Omaha, Neb., Oct. 11, 1892.

Mr. President:

Your special committee appointed to confer with the managers of the railway companies with reference to the early completion of the Union Depot, respectfully report that they have had several interviews and meetings with the representatives of the Union Pacific Railway Company, the Burlington & Missouri Railroad Company and the Union Depot Company, and together with the city attorney and city engineer, have made, received and considered propositions and that as the result of said action a final plan of settlement has been agreed upon, subject to the approval of the council and mayor, which is as follows:

Points of settlement between the city of Omaha and the Union Pacific Railway Company and the Union Depot Company.

First: The Union Pacific Railway Company and the Union Depot Company release and relinquish to the city the $150,000 of viaduct bonds voted under ordinance No. 2289.

Second. The Union Pacific Railway company shall remise, release, and quit claim to the city of Omaha, the land now known as the "Windspear Triangle," with the accretions thereto except its one hundred foot of right of way to East Omaha.

Third. The Union Pacific Railway company shall remise, release and quit claim to the city of Omaha, blocks L, M, N, O and P, in the city of Omaha, together with all the accretions to said blocks.

Fourth. The Union Pacific Railway company shall remise, release and quit claim to the city of Omaha any and all right, title or interest that it may have acquired in and to that portion of Fourteenth street in the city of Omaha lying south of the south line of Burt street, except

the right to maintain its tracks across Fourteenth street at or near Marcy and Mason streets.

Fifth. The Union Pacific Railway company is to take up and remove from blocks L, M, N, O and P all the tracks by it heretofore constructed on said blocks. The said company will also take up from Eighth street the track built by it extending from near the northeast corner of block 313 to near the southwest corner of block M, so as to leave said Eighth street free from tracks at said point.

Sixth. The Union Depot Company shall at once upon the completion of the proposed arrangements and without delay recommence the union depot at Omaha and in good faith prosecute the union depot to completion with all practicable speed, adhering generally and substantially to the plans for the construction thereof as shown by the plans made by Messrs. Van Brunt & Howe and under which a portion of the work on said union depot has already been done, with the exception of the tower, which is to be remodeled by said architect.

Seventh. The Union Pacific Railway Company also agrees to surrender to the city for cancellation the unpaid warrants issued to it for money advanced for payment of damages on account of the construction of the tenth street viaduct, such unpaid warrants amounting to about $30,000; and also agrees to release the city from all claim or demand for money by it advanced and paid by the city as damages to property owners on account of the construction of said viaduct, amounting to about $10,000; the city to return for the purpose of cancellation the unpaid checks of said company, the payment of which was enjoined by the court, and which amount to about $19,000.

On the part of the city, in addition to surrendering said checks for cancellation, a deed is to be executed by the city to the Union Pacific Railway company conveying its right, title and interest to the ground described in the deed to Alvin Saunders, trustee, including lot 3, block 206, and that portion of tenth street under the viaduct south of the premises owned by McGavock formerly known as Bell's drug store, such deed to be conditioned that the said ground shall be used only for depot and railway purposes, the city is also to convey by deed of quit claim the lots heretofore conveyed by its deed together with the

streets and alleys within the Union Pacific railway shop grounds and extending eastward to Eighth street, leaving Eighth street open as agreed upon by said railway company. The city in addition is to lease the Union Pacific Railway company and the Union Depot company from the two bonds required to be given by the provisions of said ordinance No. 2289.

The foregoing substantially covers what is proposed between the city of Omaha and the Union Pacific Railway company.

For the more full protection of the city and to enable any railway company desiring to construct a bridge at or near Cass street to do all your committee suggest that an addition so, condition so far as said Cass street is concerned be inserted whereby the city would have the right to allow any railway company constructing a bridge at or near such point to go over the tracks, buildings or improvements of the said Union Pacific Railway company and to have the right to construct at suitable points on said Cass street the piers or supports necessary to make such crossing. This your committee is advised the Union Pacific is willing to do.

Your committee believe that the proposed settlement is one greatly in the interest of the city as well as beneficial to the Union Pacific Railway company, and in view of the fact that such settlement is much to be desired on the part of the city, your committee recommend the same and submit the proposed proposition for such consideration and action as the council and mayor may deem proper subject to the disposal of pending injunction suits.

Your committee further recommend that the city attorney and city engineer prepare the deeds and papers necessary to carry out the proposed settlement, and that the deed conveying streets, alleys and lots for shop grounds be conditioned that the same shall be used and occupied as shop grounds, the city reserving the right to construct sewers when necessary through any streets not occupied by buildings.

Your committee further recommend that the city attorney and city engineer prepare all such papers and deeds at the earliest time practicable, and upon the same being approved by the Union Pacific Railway Company, report

the same to the city council for such further action as may be necessary.

Sol Prince,
Geo. F. Monro,
A. G. Edwards,
E. P. Davis,
T. J. Lowry,
Special Committee.
W. J. Connell,
City Attorney.
Andrew Rosewater,
City Engineer.

ORDINANCE No.——.

An ordinance providing for the settlement and adjustment of sundry suits in equity, and of sundry controversies now existing between the city of Omaha on the one part and the Omaha Union Depot Company and the Union Pacific Railway company, jointly and between said city and the Union Pacific Railway company, and authorizing the conveyance of certain lands, lots and grounds by said city, and accepting by it of conveyance of sundry lands, and providing for the carrying out and completing a settlement and adjustment of said suits and controversies.

Whereas, controversies now exist between the city of Omaha, the Omaha Union Depot Company and the Union Pacific Railway company, which controversies relate to the title to certain lots, lands, streets, alleys and grounds in the city of Omaha, to which adverse and hostile claims are made and urged by said companies respectively or some of them; and

Whereas, There also exists a controversy concerning the construction of a union depot at Omaha, Nebraska, and the rights and liabilities of the several companies under certain ordinances of the city of Omaha, numbered 2305, 2355 and 2289, concerning certain aid to said Union Depot company and conveyances to said Union Depot company and said Union Pacific Railway company for the erection of said depot, and a viaduct upon south tenth street across the railroad tracks near the site of the union depot building now partially constructed; and

Whereas, There are sundry other controversies existing which are vexatious to the railway company and to the city and its inhabitants; and

Whereas, It has been and is deemed to be of importance to the business interests of the city of Omaha and its inhabitants, as well also as to the railway company, and to the Union Depot Company that sundry of said disputes and controversies shall be amicably settled, and disposed of so that the title to said lands, lots, blocks, streets and grounds shall be confirmed to and vested in the parties to whom by the terms of such settlement the same shall of right go, and so that the construction and completion of the Union Depot shall be speedily brought about; and

Whereas, the subject of such settlement and adjustment of said disputes and controversies has been considered by a committee of the city council of the city of Omaha, and the representatives of the railway company and the Union Depot company; and

Whereas, the said committee, on October 11th, 1892, filed and presented to said council a certain report of a final plan of settlement of such controversies and disputes which report was adopted by the city council; and

Whereas, sundry conveyances and releases are necessary to carry the terms and conditions of such settlement into effect; therefore,

Be it ordained by the city council of the city of Omaha:

Section 1. The mayor of the city of Omaha is hereby authorized to receive from the Omaha Union Depot Company a release of any and all claims or demands on its part to have or receive from the city of Omaha all or any part of the bonds of the city of Omaha, provided for and directed to be issued under the terms and conditions of a certain ordinance of the city of Omaha numbered 2289 and entitled "An ordinance calling a special election to vote upon the proposition to issue coupon bonds of the city of Omaha in the sum of one hundred and fifty thousand dollars ($150,000) to aid the Omaha Union Depot Company in the construction of a union railway passenger depot; railways and other works of internal improvement, passed and approved October 30, 1891."

Section 2. The mayor is hereby authorized and directed to accept from the Union Pacific Railway company, at the time and in the manner hereinafter by section — hereof required, proper deeds of conveyance

whereby said railway company remises, releases and quit claims to the city of Omaha:

First. All of blocks L, M, N. O and P, in the city of Omaha, as shown on the original lithographed map of said city.

Second. All of the strip, lot or tract of land lying to the northeast, east and southeast of blocks L, M, N, O and P in the city of Omaha, as originally surveyed and platted, which has accumulated or grown to the eastward, northeastward or southeastward of said blocks, or any of them by accretion, except therefrom one hundred feet in width, over and across said described lands, being fifty feet on each side of the center line of the track of railroad of said Union Pacific Railway Company, now constructed and in operation across the same.

Third. All the right, title and interest of the Union Pacific Railway company in and to all of that part of Fourteenth street in the city of Omaha which lies south of the south line of Burt street except the right to maintain and operate its tracks over and across Fourteenth street at or near or between Mason and Leavenworth streets.

Section 3. The mayor and city treasurer are hereby authorized and directed to receive from the Union Pacific Railway Company all the unpaid city warrants issued to it for money advanced by it for payment of damages on account of the construction of the tenth street viaduct, which unpaid warrants amount to about the sum of thirty thousand dollars ($30,000), more or less, and a release from the Union Pacific Railway company for all claims and demands for money by it paid and advanced to the city which has been by the city paid over to property owners as damages on account of the construction of said viaduct, amounting to about the sum of ten thousand dollars ($10,000); and the mayor and city treasurer are also then and there required and directed to pay over and deliver to the Union Pacific Railway Company the unpaid checks of the Union Pacific Railway company now held by the City treasurer as part of the money advanced on account of said damages, which checks amount to about the sum of nineteen thousand dollars ($19,000) more or less, and are the same and all of the checks, the payment and collection of which are enjoined in a certain suit

erein the Union Pacific Railway Company is plaintiff
l the city of Omaha and John Rush et al are defendants.

Sec. 4. The mayor is hereby authorized and directed
xecute and deliver under the seal of the city, to each
Union Pacific Railway company and the Omaha
ion Depot Company, a release, releasing, discharging
l relieving them and each of them from the making,
cution or delivery of the two bonds or undertakings
cified and mentioned in certain ordinances of the city
Omaha, viz. No. 2289, entitled "An ordinance calling
pecial election to vote upon the proposition to issue
pon bonds of the city of Omaha in the sum of one
ndred and fifty thousand dollars ($150,000) to aid the
aha Union Depot Company in the construction of a
on railway passenger depot, railways and other works
nternal improvement in the city of Omaha," and No.
5, entitled "An ordinance authorizing and instructing
mayor of the city of Omaha and Alvin Saunders,
stee, to convey to the Union Pacific Railway Company
the right, title and interest of said city in and to cer-
n depot grounds in the city of Omaha."

Sec. 5. The mayor is hereby authorized and required
nake. execute and deliver to the Union Pacific Railway
npany conveyances remising, releasing and quit-claim-
to it and its successors the land and premises de-
ibed as follows:

First: All the lots and lands described in a certain
d dated January 20, 1872, between Alvin Saunders,
stee, of the city of Omaha, party of the first part, and
Union Pacific Railway company, recorded in book 12
deeds at page 320, and also lot 3 in block 236.

Also all the premises described in deed dated July
1872, from the city of Omaha to the Union Pacific
lway company, recorded in book 13 of deeds at page 26.

Also, commencing 52 feet north of the southeast cor-
of lot 8 in block 203 and running thence south along
west line of tenth street to the southeast corner of
3 in block 220; thence east to the southwest corner of
5 in block 219; thence north along the east line of
th street to a point 52 feet north of the southwest
ner of lot 5 in block 204; thence west to the point
beginning; also

Second: All the premises, lots and grounds heretofore conveyed to the Union Pacific Railway company by deed of the city of Omaha, dated August 25, 1866, recorded in book T of deeds at page 434 except 14th street from the south line of Cuming street north to Izard street and the alley in block 321 and 8th street north of the south line of Chicago street.

Also, all streets and alleys bounded on the west by the eastern line of the premises described in the last above named deed, on the north by the south line of Izard street, and on the east by the west line of 8th street.

Also the street between blocks 299 and 300.

Also the street between blocks 300 and 313.

Also the alleys through blocks 299, 300, 313 and 314.

Also lot 7 in block 322, lot 8 in block 323, lot 3 in block 333, lot 3 in block 331, lot 2 in block 354, lot 4 in block 4, lot 3 in block 5, lot 7 in block 35, lots 5 and 8 in block 65, lots 7 and 8 in block 69, lots 1 and 4 in block 94, lots 1, 2, 7 and 8 in block C, lot 5 in block 127, lot 1 in block 156, lot 3 in block 157, lot 5 in block 312, lot 6 in block 313, lot 6 in block 317, lot 2 in block 318, lot 7 in block 326, lot 2 in block 327, lots 5, 6 and 7 in block 323, lots 2 and 7 in block 96, lots 3 and 4 in block 67, lot 1 in block 66, lot 3 in block 2.

Also 8th street between Jackson street and Jones street, and the alley through blocks 178 and 179.

The said conveyance to be made subject to such conditions as is provided by the report of the special committee relating thereto, adopted by the council———, and with property provisions for reversion as will protect the city.

Section 6. Alvin Saunders, trustee of and for the city of Omaha, is hereby authorized and directed to make, execute and deliver to the Union Pacific Railway Company, subject to said conditions, a conveyance remising, releasing and quit claiming to it, all and singular all the the premises described in a certain deed, dated January 20, 1872, made by the said Alvin Saunders, trustee, of the City of Omaha, as party of the first part, and the Union Pacific Railroad company, as party of the second part; and also, lot No. 3 in block No. 236.

Section 7. The Omaha Union Depot Company is hereby authorized to construct and maintain at its own

cost an inclined roadway, connecting with and from either the tenth street or eleventh street viaduct, as it may elect, for access to and egress from said Union Depot by the public. The connection of said roadway with said viaduct, however, is to be made according to plans and specifications therefor approved by the mayor and council of the city of Omaha before the making of such connection.

Sec. 8. The mayor is hereby authorized and required to deliver to and to receive the conveyances, releases and acquittances in this ordinance mentioned and specified, upon the delivery to him of a bond or obligation of the Omaha Union Depot Company, with good and sufficient sureties, to be approved by the mayor, in the sum of two hundred thousand dollars ($200,000) as liquidated agreed and assessed damages, conditioned that if the Omaha Union Depot company shall at once or within thirty days from the delivery of said bond to him, recommence work upon the construction of its Omaha union depot at Omaha, Nebraska, and shall in good faith, with all reasonable diligence, prosecute to completion all of the parts of said structure to be used as such union depot so that the same shall be completed for use as a passenger station on or before the expiration of —— months after the delivery of said bond (time lost by strikes of workmen engaged in the construction of said work, and inevitable delays caused by the act of God, or time lost by reason of delays by legal proceedings, nor included), substantially and generally according to the plans for the erection and construction of such depot, drawn and made by Van Brunt & Howe, under which a portion of said structure has already been built, excepting, however, as to the tower for such structure and the distribution of its floor space into rooms, and as to heating and ventilating arrangements shown on said plans as to which the said company may and shall, if it elects so to do, remodel or modify the same to its convenience or interest or to what it may deem of benefit to said depot and its uses; then the said obligation and bond or recognizance shall be void and of no effect, and otherwise upon breach of the condition of said bond, the same shall remain in full force and effect.

Sec. 9. That this ordinance shall take effect and be in force from and after its passage.

Opinion of the Court.

Afterward, on the 26th day of April, 1893, Opinion of the Court was filed herein, which said Opinion is in the words and figures following, to-wit:

This is an application to modify the injunction heretofore granted in this action.

Before speaking of the merits of the present application it may be well to refer briefly to the original controversy, which may be said to be the foundation of this action.

In 1869 the people of Douglas County voted to the U. P. R. R. Co. $250,000. of bonds to aid in the construction of a railway bridge across the Missouri river & in acquiring terminal facilities. At the same time the people of this city voted $200,000 of bonds, a large part of the proceeds of which were applied to the purchase of twenty acres of land for depot purposes and the remainder were delivered to the railway Co., these bonds have all been paid together with 10 per cent interest, the title to the property which was acquired in part by private negotiations and part by condemnation proceedings was in the first instance taken in the name of Alvin Saunders as trustee. On Jan. 1, 1872, a contract was entered into between the City & County & the U. P. R. R. Co. in which it was agreed on the part of the company that in consideration of these donations the company should build & maintain a depot for freight & passengers on the grounds & should admit all connecting roads to enjoy the benefits of these terminal facilities, exchanging business of all sorts & in every way with the U. P. R. R. Co. paying therefor a reasonable compensation. In the same month Gov. Saunders conveyed said lands to the railroad Co. subject to conditions and limitations expressed in the contract. The company has never fully performed what it had agreed to do and for which it received these subsidies which still remain binding upon the parties. In 1889 the people of Omaha voted an additional $150,000 of bonds to secure in substance what they had contracted for originally. This action was brought to restrain the delivery of said bonds until the people were assured of the conditions upon which they were voted, & to restrain the release of the railroad from the conditions & limitations upon the title by which the company held said lands. By the record in this case, it is

en that the petition in substance alleges that these enty acres of land are impressed with a trust in favor of e public; that they are dedicated to the purpose of trans- r ground the benefit of which is secured by the contract all connecting roads equally to the commercial advant- e of the city. It is also alleged that the city authorities e about to release the company's title from the condi- ons & limitations imposed thereon. The answer of the pot Co. alleges that it is & always has been ready and illing to perform all the provisions of the ordinance of 89 and tenders full performance thereof.

In the answer of the City the Mayor and comptroller, is alleged the parties are all of them ready and willing perform everything called for by the ordinance. They sist in that application that no injunctions ought to be lowed for the reason that they were not about to do the leged illegal acts complained of in the petition. To event the allowance of the injunctions upon their issues, e defts filed certain affidavits one of which was by Mr. oldredge, Gen. Manager of the B. & M. R. R. Co. repre- nting the interests of the C. B. & Q. R. R. in this city, which. he in substance states that his company is ready d willing to perform all the matters and things required it by the ordinance. He also states that when the oject of building the station house was in contempla- on, his company and the U. P. R. R. Co. offered to let e other Iowa roads in upon the same terms; that these mpanies refused to take an interest in the work & it as agreed between them all that these other Iowa Com- anys should have and enjoy the station house and ansfer grounds, in equal terms in all respects with the her companies, paying therefor a reasonable compensa- on; the affidavit of Mr. Holcomb as Gen. Man. of the U. R. R. Co. states that his company is ready and willing perform all the things required of it by the ordinance. he affidavit of Mr. Thurston, sets forth a resolution of e executive committee of the U. P. R. R. Co. as follows:

"Resolved that it is the policy of the Union Pacific ompany to allow all railroad companies the use of the idge over the Missouri river at Omaha and the pproaches thereto; and also the use of the Union Passen- r Depot at Omaha, on equal and equitable terms; the me to all companies."

Upon the application originally made an injunction was granted, which is now sought to be modified.

This application is based upon the report of a special committee of the city council made Oct. 11 1892 and a proposed ordinance which I understand has passed to its third reading, it is contended by the city atty. that the court modify its former order of injunction so as to permit the passing of this ordinance, or some other one to be hereafter introduced for the settlement and adjustment of this long existing controversy. The proposed ordinance, among other things, authorizes the conveyance of certain lands by said city to the Omaha Union Depot Co. and the U. P. R. R. Co. including certain streets and alleys as are more particularly set forth in the said report & ordinance, this proposed conveyance includes all the lots & lands in the deed of date Jan. 20, 1872, between Alvin Saunders, trustee of the city of Omaha and the U. P. R. R. Co. It is not necessary to go into detail in regard to the special tracts to be granted or the considerations to be received from the company for this proposed settlement; it is sufficient to say in brief that the result of a modification of the injunctions as prayed for would permit the City council to do precisely what the Plffs. in their petition allege it was about to do and to prevent which this action was brought originally.

As the issue now exists and without stating in the record any reason for the change of purpose of the city council, or the advantages that would accrue to the city by the passage of said ordinance, other than appears upon the present application by reference to the same, "that it is for the settlement and adjustment of sundry suits in equity and of sundry controversies now existing" &c. upon this bare reference and statement the court is requested to modify its former order, without any reasons adduced other than the alleged settlement &c. It is to be left to the Mayor and Council to make such settlement, so called, as in their judgment would be just and proper. If this is to be done, the issues in the case ought to be reformed; a new case presented and reasons adduced upon the record to support the application. In default of this, the former order should be continued in force until the trial when all the facts can be presented.

It was contended by Counsel upon the hearing that

e deft. company had title to the ground in question
der the trust deed by force of the statute of limitations.
at the proposed conveyance, in part, did not affect any
l substantial interest that the company did not have
der its grant; this question is not necessary to decide at
e present time. I cannot believe, however, that in a
nveyance made upon specific conditions and limitations
was the Saunders deed of 1872, that the grantee can
il to perform the same and hold the land discharged of
id conditions under the statute, the fact that the trust
not sought to be enforced specifically or an action for
mages brought within the time limited, can make no
fference.

A grave objection to the ordinance is the proposed
nveyance to the rail road company of certain streets and
leys. It is not necessary to review the authorities at
ngth, suffice it to say that the city council has no legal
thority to sell and convey property the title to which
longs to the city, unless restricted by charter or statute
municipal corporation has the incidental or implied
ght to dispose of its property real or personal of a private
lue. The rule is different in regard to streets, alleys
d public squares, the streets and alleys of the City
long to the public and are held by the city in trust for
e public at large and to their use they are forever dedi-
ted; the city has the authority to control and regulate
at use, but it has no legal right to sell and dispose of
such property for private use and thereby destroy the
ust created for the benefit of the public. This proposed
nveyance of certain streets and alleys to the rail road
mpany would be an abuse of the trust reposed in the
ty and without warrant or authority of law.

The proposed conveyance and release to said company
the city of the land conveyed in 1872 by the Saunders
ed would have the effect to relieve the R. R. Co. from the
nditions and limitations of that deed. These lands were
ught with the proceeds of bonds which were issued for
certain specific purpose by a vote of the people. The
nd was conveyed subject to certain conditions and limi-
tions for the protection and benefit of Omaha and Doug-
s Co. It is now proposed to make conveyances which
effect will free these lands from the trusts so specified.
his cannot legally be done. If it is competent for the

city by the mayor and council to release the R. R. Co. from the performance of these acts, which constitute the consideration upon which the bonds were voted, that there are no intents whatever in the nature of a public trust which cannot be disregarded and violated.

The application to modify the injunction as prayed for is denied.

By the Court,
A. N. Ferguson,
Judge.

Afterward, on the 23rd day of May, 1893, Opinion of the Court was filed herein, which said Opinion is in the words and figures following, to-wit:

Opinion of the court.

District Court, Douglas Co. Nebr.

Stuht et al,
vs
City of Omaha, et al.
} Opinion by the Court.

In the year 1869 the inhabitants of Omaha voted a large sum of money in bonds, a great portion of which was applied toward the purchase of twenty acres of land to be used for depot purposes, in aid of the Union Pacific Rail road Company.

A portion of said tract was acquired by condemnation proceedings and the title to the whole was taken in the name of Alvin Saunders, as trustee.

On January 1st, 1872, a written contract was entered into between the city and county and the U. P. R. R. Co. in which it was agreed upon the part of the company, that in consideration of these donations the company should build and maintain a depot for freight and passenger purposes upon these grounds and should admit all connecting lines to enjoy the benefits of these terminal facilities; exchanging business of all sorts and in every way with the U. P. R. R. Co, they paying therefor a reasonable compensation. In the same month, Alvin Saunders as trustee, conveyed said lands to the R. R. Co. subject to the conditions of the contract and as expressed in the conveyance.

The defendant, the Union Depot Co., was incorporated for the purpose of erecting a Union Depot on said premises, with perhaps some additional ground purchased

by said company. In 1889, $150,000 of bonds were voted by the inhabitants of Omaha, ostensibly to aid in said enterprise. This action was instituted by the plffs. to restrain the delivery of said bonds until the people could be assured of the performance of the conditions upon which they were voted, and on the ground of illegalty as well as to restrain the release of the land in question from the conditions and limitations under which said land was held. The petition in this case in substance alleges that these twenty acres of land are impressed with a trust in favor of the public; that they are dedicated to the purpose of transfer grounds, the benefit of which is secured by the contract to all connecting roads equally as well as all referring to the other limitations and conditions expressed in said contract and deed.

It is also alleged in the petition that the city authorities are about to release the rail road company's title from the conditions and limitations imposed thereon by the original conveyance; and that said bonds are invalid for the various reasons alleged in the record.

It is not necessary in the disposition of the question before us to go into detail or to cover the entire field that was before us upon the hearing of the case.

It is sufficient for us to say that a permanent injunction be granted as to the issue and delivery of the bonds in question. We find as a matter of fact, from a consideration of the evidence that before said bonds were voted, a proposition was submitted to the people for the erection of a union depot. That said proposition included certain plans for the same; that in voting for said bonds the people considered and acted upon the proposition then before them. That subsequent to said vote said plans were materially changed, and that the depot building which the deft the Union Depot Co. now propose to construct is materially different from the one submitted to the people at the bond election. It is no answer to this to say that the city council consented to and approved this change or substitution; they had no legal authority so to do, the people had acted in the premises and made their selections and voted bonds for its building, there was no delegated implied or statutory authority for the city council, who are simply trustee and agents for the inhabitants to make any other or different contract, or to

substitute any other plan than the one selected and approved by them. We find further, that while said bond proposition was ostensibly for depot purposes, &c., its real purpose was to aid in the construction of the 10th street viaduct. Under the law assistance of this kind could not legally be given. We are satisfied from the evidence that the proposition upon which the bonds were voted was not the real one; it was simply a cloak or cover to aid or reimburse the rail road for the building of the viaduct. A Court of equity cannot sanction such a proceeding. For this reason if no other existed, the issue and delivery of the bonds must be enjoined.

Another question remains to be considered, namely, the proposed conveyance by quit claim deed from the city to the railroad company of the land in question. We hold that this property is improved with the trust set forth in the deed of 1872. The mayor and city council have no lawful authority to make such conveyance; if such were made it would not estop the city from any contingent interest in said property, or bind it upon a reversion of the property. Such a deed would be a mere nullity. The legal title to this land has never been in the city. The inhabitants thereof bought the land by the bonds voted in 1869, and had it conveyed direct from the grantors to a trustee in trust and and by him conveyed to the railroad company. Any reversion would enure to the benefit of the inhabitants generally; and in the matter of the re-conveyance as proposed by the city, the mayor and council could only act by express authority, the city council, as such, is an organization under the law of well defined and limited powers. If they seek to go beyond this limit, they must first ask and obtain such authority from the people, or the people must grant it upon their own motion. Any power or authority for the council to make this re-conveyance must first be granted them by the sovereign power; it cannot be assumed by the delegate.

We do not think that under the Saunders conveyance tc the rail road company, that this requires that company always to own and possess the land; but simply that said land shall be used for the purposes expressed in the contract and deed of 1872, if the company transfers the same to the deft. the Union Depot Co. under the same condi-

tions and limitations and the premises are used for these purposes with the admission of all connecting roads to the benefit of terminal facilities and other conditions of said trust be complied with there would in such case, be no violation of the conditions and no reversion.

It is not of much moment as to who accepted the ground in question; the sole object of the people in making this grant to the company was to obtain the objects expressed in the contract and deed of 1872, and so being as this is obtained there can be no reversion, no matter who owns or possesses the premises.

1st. The issue and delivery of said bonds are perpetually enjoined.

2nd. Any deed from the Mayor and City Council to the land in question, without an express authority from the people of the City and County, by vote under the rules of the law permitting such transfer is perpetually enjoined.

Afterward, at the May term of Court and on the 10th day of June, 1893, a Decree was rendered herein, as follows:

Decree.

Ernest Stuht and John D. Howe, Plaintiffs,
vs.
The City of Omaha, Nebraska, the Omaha Union Depot Company, Alvin Saunders et al., Defendants.
22–314. DECREE.

This cause coming on for final hearing, was heard upon the testimony of the plaintiffs and defendants and the arguments of counsel. The plaintiffs were represented by John D. Howe, pro se, and by J. M. Woolworth and J. C. Cowin; the City of Omaha by W. J. Connell, its attorney and the Omaha Union Depot Company by C. J. Green and J. M. Thurston its attorneys.

And the court does now find that said proposed issue of negotiable bonds of the city of Omaha in the sum of $150,000 below described, is illegal, and void, and that said city its officers and agents, have no authority in law

to execute, issue or deliver the same; to which find
defendant, the Omaha Union Depot Company excepts

And the court does also find that said city of Om
its Mayor and common council, its city clerk, and co
troller, have no right, power or authority to make, exe
or deliver any deed of conveyance, or other instrum
conveying affecting or impairing the right, title, inte
trust, benefit and advantage of said city, and of its
zens and inhabitants, in or to the real estate below
scribed: to which finding defendants except.

It is therefore ordered, adjudged and decreed t
said city of Omaha, its Mayor and Common Council,
City Clerk and Comptroller, and officers, their and eac
their successors in office, their agents and attorneys be,
they are hereby perpetually restrained and enjoined fr
making, executing, issuing or delivering to Kou
Brothers of New York, or to any other party, any of
bonds of the city of Omaha described in the petition
amended petition herein, being the bonds of said city
scribed in that certain proposition submitted at the e
tion held in said city November 28th, 1889, under t
certain ordinance of said city numbered two thousa
two hundred and eighty-nine (2289) entitled "An o
nance calling a special election to vote upon the prop
tion to issue coupon bonds of the city of Omaha in
sum of One Hundred and Fifty thousand Dollars ($15
000) to aid the Omaha Union Depot Company in the c
struction of a Union Passenger depot, railways, and ot
works of internal improvement in the city of Omaha,"
proved October 30th, 1889. To which the Omaha Un
Depot Company excepts.

And it is further ordered, adjudged and decreed t
said city of Omaha, its Mayor and City Council, its C
Clerk and their successors in office, as well as all its office
agents and attorneys, and said Alvin Saunders, be and th
are hereby perpetually restrained and enjoined from m
ing, executing, issuing or delivering to said Omaha Uni
Depot Company, or any other party, any deed of conv
ance, or other instrument which shall in any manner,
lease, relinquish, affect or impair, any right, title or int
est, advantage or benefit of the city of Omaha, or of
citizens or inhabitants in or to any of said real estate
scribed in said petition, and amended petition, includi

that certain real estate described in the deed of conveyance executed by Alvin Saunders, Trustee, to the Union Pacific Railroad Company, dated January 20th, 1872, and recorded in Book 12 of Deeds, at page 220, and following, Douglas county, Nebraska, records. And that said Omaha Union Depot Company, its officers and agents be and they are hereby perpetually restrained and enjoined from receiving any such deed, instrument or title. To which decree relating to said real estate, all of defendants except.

And it is further ordered, adjudged and decreed that the Mayor, City Clerk and Comptroller, or either of them, or their successors in office, or any other officer of said city of Omaha, who may have in his possessions, or under his control, any bonds of the city of Omaha that have been made or executed under said proposition, so as aforesaid set out in said ordinance, numbered two thousand two hundred and eighty-nine (2289) of said city of Omaha, cancel and destroy or cause to be cancelled or destroyed any and all of such bonds; to which the defendant the Omaha Union Depot Company excepts.

And it is further ordered, adjudged and decreed that the defendants the Omaha Union Depot Company, and the City of Omaha pay the costs of this suit, taxed at $———— to which said defendants except.

The defendants are hereby given forty days from this date in which to prepare and serve their bill of exceptions in this case.

On the application of the defendants, the amount of the appeal bond is fixed at $500.00; and the amount of the bond to secure any supersedeas allowed by law at the sum of $1,000.00.

A. N. Ferguson,
W. C. Walton,
Judges.

June 10, 93.

The State of Nebraska, } ss
Douglas County. }

I, Frank A. Broadwell, Clerk of the District Court, in and for Douglas County, Nebraska, do hereby certify that the foregoing is a full and true Transcript of the proceedings and record (see 55th Neb. P. 472) had in the cause in the District Court, containing the Petition, Bond,

Motion, Order, Amended Petition, Bond, Answer of Omaha Union Depot Co., Order, Demurrer, Stipulation, Order, Answer, Order, Order, Bond, Reply to Answer of Omaha Union Depot Company, Stipulation, Motion, Motion, Opinion of the Court, Opinion of the Court, and Decree, in the case of Ernest Stuht et al against The City of Omaha, et al, appearing of record in said Court.

I hereby further certify that no appeal or other proceedings have been had to reverse, set aside or modify the judgment in said cause and that the same is now in full force and effect.

WITNESS my signature, and the seal of said Court, at the City of Omaha, this 2nd day of April, 1903.

Frank A. Broadwell,
Clerk.

[SEAL]

By John H. Grossmann,
Deputy.

JUDGE MCHUGH: We now offer in evidence a certified copy of the records of the City of Omaha, in relation to the voting of bonds for the purpose of purchasing terminal and depot grounds for the Union Pacific Railroad Company, and the issuance of said bonds, and the purchase of said terminal grounds and the conveyance of said grounds by Alvin Saunders, Trustee, and the contract between the Union Pacific Railroad Company, the City of Omaha, and the County of Douglas.

MR. BALDWIN: To all, every, and each of which items of evidence, as offered, the defendants object as incompetent, irrelevant and immaterial; no part of the objection being urged upon the ground that the originals are not used in place of certified copies.

The certified copy of records, etc., as offered, are read in evidence and are as follows:

Record E, Page 159.

Council Chamber, 8th January, 1868.

Council assembled pursuant to adjournment.

Present, The Mayor, Aldermen Creighton, Patrick, Green, Maguire, and Bruning.

Minutes of last Council meeting read and approved.

On motion of Ald. Creighton, the rules were suspended for the purpose of receiving a verbal communica-

tion from a committee appointed by a meeting of the citizens of the City to wait on the Council in reference to donating the right of way in the City and securing to the U. P. R. R. Co. grounds for a depot on their locating and constructing a bridge across the Missouri River within the city limits.

A committee from a meeting of the citizens of the city, composed of O. P. Hurford, Ezra Millard, J. G. Chapman and G. M. Mills, stated through Mr. Hurford the object for which they were appointed to wait on the Council, and then they through Ald. Green presented the following resolution which, on motion, after considerable discussion, was adopted:

Be it resolved by the City Council of the City of Omaha, That the City of Omaha assume and bear the expense and cost of securing to the Union Pacific Railroad Company free of cost the right of way for a track from the bridge crossing of the Missouri River known as Line Number Two (2) or Lower Omaha Crossing, to its intersection with the track of said company already built, and also for a track from said crossing to the Machine Shops and Depot of said road, and also such grounds for depot purposes as may be deemed necessary by the Chief Engineer of said road and being about twelve (12) acres, as shown on the maps in the Engineer's office, and, in case the upper crossing shall be adopted and the bridge located at or near that point, we pledge the like aid; And that the Mayor be and is hereby directed to call an election for the purpose of deciding whether or not a loan shall be made by the City of a sum sufficient for that purpose.

Record E, Page 179.

Council Chamber, Feb'y 8th, 1868.

Ald. Creighton presented the following resolution, which was on motion adopted:

Resolved, that in order to carry into effect the resolution of the City Council adopted January 8th, 1868, the Mayor be and he is hereby authorized to submit by his proclamation the question to the voters of this City of borrowing a sufficient amount of money to purchase Depot Grounds and right of way contemplated in said resolution on the permanent location of the Bridge in said resolution mentioned, whenever the amount necessary to be raised

shall be definitely ascertained by said City Council as to the indebtedness to be incurred by the taxpayers of said City.

Record "E," Page 322.

Council Chamber, June 30th, 1868.

Ald. Ambrose offered the following resolution:

Resolved, by the City Council of the City of Omaha, That the following proposition be submitted to the electors of the City of Omaha, and that notice of the same be published for ten days as follows, to-wit: Notice is hereby given that a Special Election will be held within and for the City of Omaha, on Monday the 13th day of July, 1868, in the first ward of said city at The Douglas House, in the second ward at The Tremont House and in the third ward at David T. Mount's Boarding-House. The polls to be opened at nine o'clock in the forenoon and continue open until six o'clock in the afternoon of the same day, for the purpose of voting on the following proposition to-wit: Shall the City of Omaha issue its bonds in the sum of One Hundred and Fifty Thousand Dollars (or so much thereof as may be necessary) for the purpose of paying for the necessary right of way and depot grounds in said City of Omaha, required by the Union Pacific Railroad Company in connection with its bridge across the Missouri River, said bonds to be payable in twenty years from date and bearing interest at the rate of seven per cent per annum payable semi-annually in New York." The form of voting on said proposition shall be by ballot, upon each of which ballots shall be written or printed or partly written and partly printed, the words "For City Railroad Bonds," or "Against City Railroad Bonds;" and if a lawful majority of the votes cast shall have thereon the words "For City Railroad Bonds" then it shall be deemed and taken in favor of the above proposition entire, and if a majority of said ballots have upon them the words, "Against City Railroad Bonds" then said proposition shall be deemed and taken to be lost.

On motion of Ald. Ambrose the resolution was adopted.

Record "E," Page 327.

Council Chamber, July 14th, 1868.

Ald. Doane moved that the Rules be suspended and

that the Council proceed at once to canvass the votes of the special election held July 13th, 1868.

Motion prevaled.

The returns from the several wards were then opened and canvassed, showing the following rssult:

In the First Ward there were cast,

"For City Railroad Bonds,".....409 votes.

"Against City Railroad Bonds," ..... 3 votes.

In the Second Ward there were cast,

"For City Railroad Bonds,".....316 votes.

"Against City Railroad Bonds,"..... 1 vote.

In the Third Ward there were cast,

"For City Railroad Bonds,"..... 351 votes.

"Against City Railroad Bonds,"..... 5 votes.

Total vote of the City,

"For City Railroad Bonds," .....1,076 votes.

"Against City Railroad Bonds,"..... 9 votes.

Record "E," Page 388.

Council Chamber, October 21st, 1868.

The following resolution offered by Ald. Doane was adopted:

Resolved, That O. P. Hurford, Esq. be and is hereby authorized to submit to the Union Pacific Rail Road Company a proposition to issue to said company the bonds of the City of Omaha to such an amount as may be necessary not exceeding the sum of one hundred and fifty thousand dollars voted for by the electors of said city on the 13th day of July 1868 for the purpose of paying for the condemnation of the property necessary for the right of way and depot grounds required by said Company in connecnection with its bridge across the Missouri River as specified and submitted at said election. *Provided* that said bonds shall be received by said Company in full of the obligation of said City to furnish said grounds and *provided* further that said bonds shall be delivered to said Company only at such times and in such sums as may be necessary for the purpose aforesaid.

Record F, Page 23.

Council Chamber, December 16th, 1868.

The petition of C. M. Mills and others asking the Council to take such steps as that the city bonds to be

issued to the Union Pacific Railroad Company to procur depot grounds and right-of-way for said Company, ma legally bear ten per cent interest, and that similar addi tional bonds be provided for to the amount of Fifty Thou sand Dollars, read, and the following resolution in refer ence to the same, offered by Ald. Meredith, was adopted

Resolved, by the City Council, That the followin proposition be submitted to the electors of the City o Omaha, and that notice of the same be published for te days as follows: Notice is hereby given that a specia election will be held within and for the City of Omaha o Monday, the 18th day of January, 1869, in the first war of said City at the Douglas House; in the second ward a the Court House, in the third ward at Wright's Block the polls to be opened at nine o'clock in the forenoon an continue open until six o'clock in the afternoon of th same day for the purpose of voting on the following prop ositions respectively, to-wit:

First. Shall the Bonds of the City of Omaha hereto fore provided to be issued for the purpose of paying fo the necessary right-of-way and depot grounds in said Cit of Omaha, required by the Union Pacific Railroad Com pany in connection with its Bridge across the Missour River, bear interest at the rate of ten per cent per annum and payable as heretofore provided.

Second. Shall the Bonds of the City of Omaha fo an additional amount of fifty thousand dollars, or so much thereof as may be necessary, be issued for the same pur pose, payable in like manner, and bearing interest at the rate of ten per cent per annum.

The form of voting on said propositions shall be writ ten or printed or partly written and partly printed the words, "For ten per cent interest on the City Railroad Bonds" or "Against ten per cent interest on the City Railroad Bonds," and if a lawful majority of the votes cast for the first proposition shall have thereon the words "For ten per cent interest on the City Railroad Bonds," then it shall be deemed and taken in favor of the above first proposition. And if a majority of said ballots have upon them the words, "Against ten per cent interest on the City Railroad Bonds," then the first proposition shall be deemed and taken to be lost.

And if a lawful majority of the votes cast for the sec

ond proposition shall have thereon the words "For the additional City Railroad Bonds," then it shall be deemed and taken in favor of the above second proposition. And if a majority of said ballots shall have upon them the words, "Against the addititional City Railroad Bonds," then the said second proposition shall be deemed and taken to be lost.

Record F, Page 33.

Council Chamber, January 19th, 1869.

The following resolution by Ald. Meredith was adopted:

Resolved by the City Council, that the following proposition be submitted to the electors of the City of Omaha, and that notice of the same be published for ten days, as follows:

Notice is hereby given that a special election will be held within and for the City of Omaha on Monday, the 8th day of February, 1869, in the First ward of said City at the Douglas House, in the Second Ward at the Court House, in the Third Ward at Wright's Block; the polls to be opened at nine o'clock in the forenoon and continue open until six o'clock in the afternoon of the same day, for the purpose of voting on the following propositions respectively, to-wit:

First. Shall the bonds of the City of Omaha, heretofore provided to be issued for the purpose of paying for the necessary right-of-way and depot grounds in said City of Omaha, required by the Union Pacific Railroad Company in connection with its Bridge across the Missouri River, bear interest at the rate of ten per cent per annum, and payable as heretofore provided.

Second. Shall the bonds of the City of Omaha for an additional amount of Fifty Thousand Dollars, or so much thereof as may be necessary, be issued for the same purpose, payable in like manner, and bearing interest at the rate of ten per cent per annum.

The form of voting on said propositions shall be by ballots upon which shall be written or printed, or partly written and partly printed the words "For ten per cent interest on the City Railroad Bonds" or "Against ten per cent interest on the City Railroad Bonds," and if a lawful majority of the votes cast for the first proposition shall

have thereon the words "For ten per cent interest on the City Railroad Bonds" then it shall be deemed and taken in favor of the above first proposition.

And if a majority of said ballots have upon them the words "Against ten per cent interest on the City Railroad Bonds" then the said first proposition shall be deemed and taken to be lost.

And if a lawful majority of the votes cast for the second proposition shall have thereon the words "For the additional City Railroad Bonds" then it shall be deemed and taken in favor of the above second proposition.

And if a majority of said ballots shall have upon them the words "Against the additional City Railroad Bonds" then the said second proposition shall be deemed and taken to be lost.

Record F, Page 44.

Council Chamber, February 9, 1869.

On motion, the Council proceeded to canvass the votes of the Special Election held Feb. 8th, 1869. The following were the votes cast in the several wards of the City:

In 1st Ward there were cast,
"For the additional bonds,".....181 votes.
"Against additional bonds,"..... 18 votes.
"For 10 per cent interest on bonds,"...175 votes.
"Against 10 per cent interest on bonds,"..... 25 votes.

In 2nd Ward were cast,
"For the additional bonds,"..... 105 votes.
"Against additional bonds," ..... 6 votes,
"For 10 per cent interest on bonds,"..103 votes.
"Against 10 per cent interest on bonds,"..... 6 votes.

In 3rd Ward were cast,
"For the additional bonds,".....101 votes.
"Against additional bonds,"..... 15 votes.
"For 10 per cent interest on bonds,"..106 votes.
"Against 10 per cent interest on bonds,"..... 10 votes.

Total vote cast,
"For the additional bonds,".....387 votes.
"Against additional bonds,"..... 39 votes.

"For 10 per cent interest on bonds,"..384 votes.
"Against 10 per cent interest on bonds,"..... 41 votes.

Record F, Page 61.

Council Chamber, February 23rd, 1869.

Ald. Meredith offered the following which was adopted:

Resolved that the Mayor be and is hereby directed to procure blank bonds to be issued in pursuance of the election held on the several propositions to issue the bonds of the City to aid in procuring the right of way and Depot Grounds of the Union Pacific Railroad Company in connection with their Bridge across the Missouri River. That such blanks be lithographed on bank note paper with forty coupons on each for the semi-annual payment of interest and prepared for issuing for the following amounts, to-wit:

$ 10,000.00 in $ 50.00 Bonds.
75,000.00 in 100.00 "
115,000.00 in 500.00 "

And that fac-simile signatures of the Mayor and Clerk be lithographed and attached to each coupon, and that the general form of said bonds and coupons shall be the same as the bonds issued for funding City Warrants heretofore issued by the City except that the same shall be payable on the first day of April A. D. 1889 and shall bear interest at the rate of ten per cent per annum, and the recital of the authority by which said bonds are issued shall refer to the elections under which said bonds were voted upon and authorized, and the first coupon shall be for the installment of interest which may become due on the first day of October, A. D. 1869 and the succeeding ones every six months thereafter representing semi-annual installments of interest at the rate of ten per cent per annum.

Record F, Page 62.

Council Chamber, February 23rd, 1869.

The following resolution offered by Ald Meredith was adopted:

Resolved that the Mayor be and is hereby authorized to go to Chicago and procure the necessary blank bonds to be lithographed on bank note paper with coupons attached, said bonds to be issued in pursuance of the several propositions submitted to the citizens of Omaha

and voted on by them in favor of issuing bonds to procure and pay for the right of way and depot grounds to the Union Pacific Rail Road Company in connection with their bridge across the Missouri River. And the Mayor is instructed to procure the lithograph plate, or see that the same is destroyed, and to take all necessary precautions for the security and safety of the impressions issued, and that the exact number thereof be returned to the City Council.

Record F, Page 92.

Council Chamber, March 29th, 1869.

Ald. Meredith moved that the Mayor and Clerk be instructed to sign the bonds to be issued to the U. P. R. R. and deposit the same in the Omaha National Bank subject to the order of the Council.

The motion was agreed to.

Record F, Page 111.

Council Chamber, April 27, 1869.

A communication from Hons. Geo. L. Miller, Geo. W. Frost & Patrick O. Hawes, acting under instructions of a committee of arrangements, inviting the Council to unite in their official capacity with the citizens of Omaha in celebrating the completion of the Pacific Railway, was read. Ald. Doane moved it be received and that the Clerk be instructed to signify to the Committee the acceptance of the same. The motion was agreed to.

Record F, Page 127.

Council Chamber, May 29th, 1869.

Ald. Evans offered the following resolution which was adopted:

Whereas, by resolution of the City Council passed March 24th 1868, Ezra Millard, Augustus Kountze, O. P. Hurford, George L. Miller, Enos Lowe and Alvin Saunders were appointed a committee to represent the interests of the city of Omaha before the Board of Directors of the Union Pacific Rail Road Company in New York and other Rail Road Companies in any matters arising before said Companies involving the interests of said City.

And Whereas, in pursuance of the action of said committee in the premises in securing the location of the Rail Road bridge across the Missouri River at Omaha the

qualified voters of said city did duly authorize the issuing of the bonds of said city to the amount $200,000 for the purpose of securing the location of said bridge at Omaha and for purchasing for said Rail Road Company the right-of-way and depot grounds in the City of Omaha.

Therefore, Resolved, That said Ezra Millard, Augustus Kountze, O. P. Hurford, George L. Miller, Enos Lowe and Alvin Saunders be and are hereby authorized and empowered to negotiate the said bonds without loss to the City and to adjust and settle all claims against the said City for securing the location of said bridge, the right of way and depot grounds as aforesaid. And the City Clerk is hereby directed to seal and deliver to said parties the said bonds, taking therefor their receipt for the same duly numbered and stated and said committee are required to make report of their action in the premises to the City Council.

Record F, Page 270.

Council Chamber, August 24th, 1869.

The following resolution was offered by Mr. McCormick, and adopted:

Resolved by the City Council of the City of Omaha, That the committee who were appointed in May last to take charge of the bonds for the purchase of the lots and buildings of the U. P. R. R. depot grounds be and they are hereby required to report at the next regular meeting of the Council, what lots and improvements have been paid for and the date of said payments and to whom the title is made.

Record F, Page 294

Council Chamber, Sept. 8th, 1869.

Mr. Mount offered the following resolution which was read:

Resolved, that the committee on Finance be and is hereby instructed to call upon the Mayor for the purpose of ascertaining the amount of depot grounds bonds that have been taken up and how much interest is likely to become due the first of October from said bonds that are taken and advise some means for the payment of the same.

On motion the report of the committee authorized to

dispose of the bonds for purchase of depot grounds &c. was ordered read.

Mr. Paddock moved to lay the resolution offered by Mr. Mount on the table for twenty minutes. Carried.

Mr. Paddock moved to rescind the motion to read the report in relation to disposal of bonds. Carried.

On motion, the resolution offered by Mr. Mount was taken from the table and adopted.

Record F, Page 320.

Council Chamber, October 5th '69.

Resolved that the Bridge Committee, to-wit, Alvin Saunders, A. Kountze, O. P. Hurford, Ezra Millard, Enos Lowe, G. L. Miller, be and is hereby instructed to sell the improvements on the depot grounds and deposit the money with the City Treasurer and report the amount of money received to the City Council.

The resolution was then adopted.

Record F, Page 327.

Council Chamber, Oct. 12th, 1869.

A communication was received from Augustus Kountze asking the Council to immediately take action for the payment of the interest due on the U. P. Bridge Bonds the 1st day of October, 1869, read and referred to the Committee on Finance.

Record F, Page 328.

Council Chamber, Oct. 12th, 1869.

The following resolution was offered by Mr. Mount and adopted:

Resolved that the Mayor be and is hereby instructed to cancel the coupons on the depot ground bonds that fall due in October, 1869, that have not been taken up, and return the same to the City Council.

Record F, Page 333.

Council Chamber, Oct. 19th, 1869.

Mr. Paddock from the Finance Committee submitted a report on the communication of A. Kountze Esq. relative to the interest coupons on the Bonds of this city for the payment of the Depot Grounds and recommending the passage of the following resolution, which report was adopted.

Resolved, That the City Treasurer of the City of Omaha, as collector thereof, be and he is hereby authorized and required to receive in payment of any and all taxes due or to become due the said city the interest coupons of the bonds of said city issued or to be issued for the purpose of Depot grounds for, and the right of way of the Union Pacific Rail Road Company in and through the said City of Omaha.

On motion, the resolution was adopted.

Record F, Page 344.

Council Chamber, October 26th, 1869.

A communication was received from H. W. Yates, Cashier of the First National Bank of Omaha, containing the following proposition. We will make the City a loan of a sum sufficient to pay these over due coupons at interest of twelve per cent per annum, the form and details to be hereafter arranged. *Provided*, we are pledged in payment of the loan the first cash fund coming into the treasury from taxes due January 1st and that the entire city deposits be kept in this bank from this time until some other bank is willing to do more than we are. Read and referred to the Committee on Finance.

Record F, Page 389.

Council Chamber, Nov. 9th, 1869.

Mr. Paddock from the Finance Committee submitted a report on the communication of H. W. Yates Esq., Cash'r of the 1st National Bank of Omaha relative to the interest coupons of the bonds issued to the Union Pacific R. R. Co. for Depot grounds &c., to the effect that the 1st National Bank are ready to loan the City any sum not exceeding Five Thousand Dollars on condition that the same be paid out of the first funds received for taxes of the current year that can properly be so applied; and on the further condition that the City treasurer shall deposit in said bank all the funds of the city now in his hands or that may be received by him until the final payment of said loan; and the committee also recommended the adoption of the following resolution:

Resolved, That the President and the City Clerk be and they are hereby authorized and directed to borrow on the credit of the City of Omaha the sum of Three Thous-

and Dollars and to deposit the same with the city
urer, to be by him kept, and in the redemption o
interest coupons of the bonds issued to the U. P. R
Co. for Depot grounds and right of way, which be
due on the 1st of October, 1869.

The above report was on motion received and re
tion adopted.

Record G, Page 10.

Council Chamber, November 16, 18

The following receipt was presented and read:

"$2,998.50.

Received of Thomas Davis & C. L. Bristol Two T
sand Nine Hundred Ninety Eight 50-100 Dollars f
demption of Coupons of City Depot Bonds.

Paid for stamp $1.50.

Nov. 11th, 1869.

(Signed) Henry Gray,
City Treasure

On motion of Mr. Davis the Clerk was instructe
spread the same on the Journal.

Record G, Page 18.

Council Chamber, Nov. 23rd, 186

A communication was received from the Mayo
relation to the canceled coupons, cut from the Or
City Bridge Bonds, which was read. On motion of
Creighton the communication was referred to the Com
tee on Finance with instructions to obtain the coupon
the Bonds not taken prior to Oct. 1st, 1869.

Record G, Page 201.

Council Chamber, April 12th, 187

The following resolution offered by Mr. Paddock
previous meeting and made the special order for Tue
evening, April 12th, was taken up and read.

Resolved, That the Mayor be and he is hereby
rected to cause the interest coupons attached to the Bo
authorized to be issued for the purpose of aiding in
curing the right of way and Depot Grounds of the U
Pacific Rail Road Company to be made payable at the
of New York, as contemplated and required by the sev
propositions submitted to the people as well as by
resolution of the Council in the premises. And tha

effect this purpose the mayor cause to be stamped with red ink upon the face of said coupons the words "Payable at the Chemical National Bank of New York."

The resolution was then adopted by the following vote, Yeas, 8, Nays, 3, as follows:

Yeas: Messrs. Homan, Kelley, McCormick, Mericle, Paddock, Rose, Rudowsky and Mr. President.

Nays, Messrs. Creighton, Mount and Richards.

Record H, Page 81.

Council Chamber, March 14th, 1871.

Mr. Paddock asked and was granted unanimous consent to present the following Petition which was read:

To the Honorable, the Mayor and City Council of the City of Omaha:

Your petitioner the Union Pacific Railroad Company respectfully represent that it is desirous of obtaining the right to use and occupy for the purpose of building thereon its depots and tracks and other structures necessary for transacting its business at Omaha, all that portion of the public streets and alleys situated within the limits of the depot grounds so called, agreed to be acquired without cost to the said Company by the City of Omaha and donated to said Company as marked and designated and located by the Engineer of said Company and represented on the maps on file in said Company's office (being the map now exhibited to the City Council) except Tenth and Seventh Streets. Your petitioner therefore prays that said portions of said streets and alleys may be vacated and a grant thereof made to your petitioner for the use of said Railroad Company in maintaining and operating its road, with full power and right to place thereon such permanent structures and erections as may be necessary for such use and purpose.

On motion of Mr. Creighton, Hon. A. J. Poppleton, Attorney, and Gen. F. E. Sickels, Supt. of the U. P. R. R. were invited to seats within the bar.

Record H, Page 91.

Council Chamber, March 28th, 1871.

Mr. Paddock from the special committee to which was referred the petition of the U. P. R. R. asking for the vacation and conveyance of certain streets and alleys in

that portion of the city known as the Depot Grounds, made a verbal report on the same, recommending the adoption of the following resolution:

Be it Resolved by the City Council of the City of Omaha, That the prayer of the petition of the Union Pacific Railroad Company for the vacation of the streets and alleys included within the limits of the Depot Grounds of said Company in Omaha and adjacent to the west end of said Company's railroad bridge over the Missouri River as known on the maps on file in the office of the Chief Engineer of said Company, be and the same is hereby granted and the Mayor is hereby directed to execute a proper conveyance of the said streets and alleys according to the prayer of said petition.

Mr. Creighton moved to amend the resolution by striking out the word "proper" in the third line from the bottom and insert in lieu thereof the words "Quit Claim." The motion was agreed to.

Mr. Allen moved to amend by adding at the end of the resolution the following: "Provided, That the Company agree to leave a passage way on Leavenworth street at least 80 feet wide by spans or otherwise."

Mr. Allen moved that the consideration of the whole matter be postponed for two weeks.

Mr. Williams moved that the motion to postpone be laid on the table.

Carried. Yeas 8, Nays 3, as follows:

Yeas, Messrs. Horbach, Homan, Kelley, Kimball, Lacey, Paddock, Smith and Williams, 8.

Nays, Messrs. Creighton, Mericle and Allen, 3.

Mr. Paddock moved that the amendment offered by Mr. Allen be indefinitely postponed.

Lost. Yeas, 2; Nays, 9, as follows:

Yeas, Messrs. Paddock and Smith, 2.

Nays, Messrs. Creighton, Horbach, Homan, Kelley, Kimball, Lacey, Mericle, Williams and Mr. President, 9.

On motion by Mr. Creighton the Council took a recess of five minutes.

AFTER RECESS.

Mr. Williams offered the following as a substitute for the amendment offered by Mr. Allen.

Provided that the R. R. Company shall leave an opening of sixty feet in width for a passage way on Seventh

Street and shall grade Tenth Street to Pacific and along Pacific Street eastward to the Bluff and shall also grade Marcy Street to Seventh Street.

On motion of Mr. Williams, the substitute was adopted.

Mr. Paddock moved to amend the Records of the Council proceedings of March 14th by striking out of the Petition the words "and Sixth." The motion was agreed to.

The resolution was then adopted as amended. Yeas, 9, Nays, 2, as follows:

Yeas: Messrs. Creighton, Horbach, Homan, Kelley, Kimball, Lacey, Paddock, Smith and Williams, 9.

Nays: Messrs. Mericle and Allen, 2.

Record H, Page 397.

Council Chamber, Jan. 2nd, 1872.

A contract between the City of Omaha and County of Douglas and the U. P. R. R. Co. in relation to issuance of bonds by said County and giving deed by said City of Depot Grounds to said R. Road Company was presented and read.

Ex-Mayor Millard by invitation addressed the Council on the question.

The following Resolution was offered by Mr. Horbach and adopted:

Be it resolved by the City Council of the City of Omaha,

That Gov. A. Saunders Trustee for the Omaha Depot Grounds on behalf of the City of Omaha be and is hereby authorized to execute a deed of said Grounds to the Union Pacific R. R. Co. in accordance with the terms and conditions set forth in the contract now before this council for their consideration; that said deed shall contain said contract or so much of the same as shall embody the terms, conditions and restrictions therein contained, and a further clause that said lands so conveyed shall revert to said city in case they shall not be occupied and improved in accordance with the terms as set forth in said deed, and that upon the execution of said deed, he shall deliver the same to the Mayor, who shall deliver the same to the proper representative of the U. P. R. R. Co. upon receiving from said Company a contract properly executed to the City of

Omaha and Douglas County in accordance with the copy prssented by the Omaha Bridge Committee.

On motion the Clerk was instructed to furnish the Bridge Committee with a copy of the proceedings of the Council in the month of March last in relation to the streets and alleys in the south part of the City.

On motion of Mr. Bartlett the Clerk was instructed to furnish the County Commissioners with a copy of the resolution offered by Mr. Horbach and adopted this date.

The following Resolution was offered by Mr. McKelligon and adopted:

Resolved, That Hon. E. A. Allen, President of the City Council, in connection with Hon. S. S. Caldwell be and he is hereby directed to notify the Trustees of the Union Pacific Bridge Company to send to this Council a complete report of the disposition of the bonds from the time of their being issued up to the present time, also all rents accruing from property and sale of buildings.

Record H, Page 400.

Council Chamber, Jan. 9th, 1872.

The following was offered by Mr. Campbell and adopted:

Resolved, That Hon. E. A. Allen, President of the City Council and Acting Mayor of the City of Omaha, is hereby authorized and empowered on behalf of, and for the City of Omaha, to sign the contract to be entered into between the City of Omaha and the County of Douglas of the one part, and the Union Pacific Railroad Company of the other part, which said contract was approved by the City Council January 2nd, 1872.

Record H, Page 419.

Council Chamber, Feb. 1st, 1872.

A communication was received from Aug. Kountze, recommending that the contract with the Union Pacific Railroad Company be spread upon the county records.

The communication was ordered filed.

Mr. Horbach moved that the contract between the City of Omaha and County of Douglas and the Union Pacific Railroad be spread upon the records of the Council and deposited with the City Treasurer for safe keeping.

The motion was agreed to.

The following is the contract referred to:

AGREEMENT made this first day of January in the year of our Lord one thousand eight hundred and seventy-two, by and between "The Union Pacific Rail Road Company" authorized by law of Congress to build a bridge across the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska, and its successors, party of the first part and the [Stamp] City of Omaha, Nebraska, and the County of Douglas in the State of Nebraska, parties of the second part Witnesseth: That Whereas, the parties hereunto desire to arrange for the more perfect connection of any railroads that are or shall be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska.

Now, in consideration of the premises and of the receipt by the party of the first part of the bonds of said Douglas County to the amount of two hundred and fifty thousand dollars and in further consideration of the receipt by the party of the first part of a deed from the said City of Omaha to certain real estate in said City known as the "Depot Grounds" and right of way, the party of the first part for itself and its successors, covenants and agreed to and with the said County of Douglas and the said City of Omaha as follows, to-wit:

First, that it will construct, complete and maintain a railroad bridge over the Missouri River at said City of Omaha.

[Stamp] Second, That the eastern terminus of the Union Pacific Rail Road shall be and remain at said City of Omaha.

Third, that after its Missouri River bridge at the City of Omaha is completed and ready for use the said Union Pacific Rail Road Company will make up all its regular west bound passenger and freight trains on the grounds which the people and City of Omaha propose as above to deed to said Union Pacific Rail Road Company and as is already mapped and platted; that is to say, all passengers and freights coming from the east on all lines of road seeking a connection with said Union Pacific Rail Road at its eastern terminus shall be delivered and transferred to the Union Pacific Rail Road Company upon said Depot grounds where the Union Pacific trains shall be made up for the west; and that said party of the first part will, after such

Bridge completion, transfer upon said grounds to the various railroads that do or may begin or end in Council Bluffs or Omaha all its passengers, baggage, express matter, mails and freight north, east or south bound.

Fourth. That said Union Pacific Rail Road Company will within one year from the date hereof expend in improvements in the building of passenger and freight depots, general passenger and freight offices, land offices, and transfer and telegraph offices upon said grounds a sum that shall not be less than One hundred Thousand dollars and to maintain these buildings and offices thereon.

Fifth, all machine, car shops and other manufactories required for the use of the said company at its eastern terminus, all permanent offices of the Company required for the transaction of its business, including the Land Department, General Superintendent's Office, General Passenger and Freight offices, warehouses for the Company's use &c shall be erected and maintained at Omaha.

Sixth, that under proper rules for their regulation, to be prescribed by said party of the first part, the trains, cars, and engines of all railroads now or hereafter running into or out of Omaha and Council Bluffs shall have unobstructed access and transit to and over said Bridge and its approaches; and such roads shall have the right to take, or cause to be taken, their trains, cars, and engines, with their freight and passengers, [Stamp.] over and across said bridge and its approaches at reasonable compensation, without discrimination, hindrance, preference or delay; *Provided*, however, that the Union Pacific Rail Road Company shall in all cases have the option of substituting its own engines for those of such other railroads in the operating of its said Bridge receiving reasonable compensation therefor. The object of this clause being to make a virtual and operating connection upon said transfer grounds between all the railroads desiring such connection, which do or may begin or end in or pass through Omaha or Council Bluffs and the trains and business of said roads.

In Witness Whereof the said party of the first part has caused these presents to be executed in triplicate by its Vice President, hereby binding said Union Pacific Rail Road Company and its successors, to the covenants and agreements herein contained and the parties of the second

part, by their authorized officers, have hereunto set their hands in triplicate the day and year first above written.

Executed in presence of
A. J. Poppleton.

(Signed)
Union Pacific Railroad Co.,
By John Duff,
Vice President, Union Pacific Railroad Co.

Attest:
(Signed) E. H. Rollins,
[L. S.] Secretary, U. P. R. R. Co.
(Signed) E. A. Allen, President of
City Council and Acting Mayor of Omaha.

Attest:
(Signed) C. L. Bristol City Clerk,
[L. S.] per L. Usher, Deputy,
The County of Douglas
By M. W. E. Purchase
James H. McArdle,
Commissioners.

Attest:
(Signed) Wm. H. Ijams,
[L. S.] County Clerk.

I, W. H. Elbourn, City Clerk in and for the City of Omaha in the County of Douglas, State of Nebraska, hereby certify the foregoing to be true, correct and complete copies of entries made in Records E, F, G and H, of the proceedings of the City Council of the City of Omaha, relative to the purchase of right of way and depot grounds for the Union Pacific Railroad Company and the issue of bonds of the City of Omaha for said purpose, said items beginning in the respective Journals on the pages indicated. I further certify that I believe that the foregoing proceedings constitute all the proceedings of said City Council of said City of Omaha relative thereto.

Witness my hand and official seal this 20th day of April, A. D. 1903.

[SEAL] W. H. Elbourn,
City Clerk.

JUDGE MCHUGH: We now offer in evidence a certified copy of the record of the Board of County Commissioners of Douglas County, Nebraska, with reference to the voting

of bonds to aid the Union Pacific Railroad Company in the construction of the bridge across the Missouri River at Omaha, the issuance of said bonds and the delivery thereof, and the contract between the County of Douglas, the City of Omaha and the Union Pacific Railroad Company.

MR. BALDWIN: We object to this as incompetent, irrelevant and immaterial; no part of the objection being urged upon the ground that the original record is not used instead of certified copies.

The copy of the record of the Board of County Commissioners of Douglas County, Nebraska, as offered above, is read in evidence, and is as follows:

(Commissioner's Record B, 310).

Monday April 20th, 1868.

Board met pursuant to adjournment. Among other proceedings the following:

Mr. Gise offered the following Resolution:

Resolved: That an especial election of the qualified voters of Douglas County shall be called for the purpose of submitting the following proposition viz:

Whether or not the County of Douglas shall issue bonds to the Union Pacific Rail Road Company to the amount of Two hundred and fifty Thousand Dollars, said Bonds to run twenty years and bear interest at the rate of Seven per cent per annum until maturity their date to be arranged and submitted in the proclamation calling said election. The object for issuing the said Bonds being in consideration for the said Union Pacific Rail Road Company establishing their permanent Bridge crossing within the limits of Omaha Douglas County Nebraska establishing also their passenger Depot within said City. Mr. McCardle moved to amend it so as to make it read One hundred and fifty Thousand Dollars but received no second.

The vote was then had on the resolution as first offered with the following result

Messrs. Chapman & Gise voting in the affirmative and Mr. McCardle in the negative.

Adjournment.

(Commissioners' Record B, 330).

Saturday, June 13th, 1868.

Board met pursuant to adjournment. Among other proceedings the following:

"In pursuance of the resolution adopted by the board at the last meeting the following Election Proclamation was issued and ordered to be published.

ELECTION PROCLAMATION.

Whereas, At a session of the board of County Commissioners of the County of Douglas, and State of Nebraska, holden on the Sixth day of June, A. D. 1868, it was by said Board

Resolved, that the following question be submitted as a proposition to the Electors of the County of Douglas, towit: To the electors of the County of Douglas, the County Commissioners of said County hereby submit the following question:

Shall the County of Douglas, for the purpose of securing the location, and aiding in the construction of a Rail Road Bridge across the Missouri river, between the Union Pacific Railroad and such other roads as may seek a connection therewith at Omaha City in said County contribute thereto in County bonds the sum of Two hundred and fifty thousand dollars, payable in twenty years from date, bearing 7 per cent interest per annum, payable semi-annually in the City of New York, for the payment thereof an annual tax not exceeding three mills on the dollar of the County valuation in addition to the usual taxes, under section sixteen chapter nine, of the Revised Statutes of the State of Nebraska defining the duties of County Commissioners, and County Clerks be levied for the payment of the interest and the establishment of a sinking fund for the payment of the principal of said bonds, until the said bonds and interest be all paid of the said sum of Two hundred and fifty thousand dollars of County bonds. One hundred thousand dollars to be issued and delivered to the Railroad Bridge company, whenever it shall properly appear to the County Commissioners of said County, that said company have in good faith expended three hundred thousand dollars in the construction of said railroad bridge. The said bonds to bear date upon the delivery thereof, payable twenty years

therefrom, with semi-annual interest at seven per centum per annum as aforesaid, and the said farther sum of One hundred thousand dollars of county bonds to be issued and delivered to the railroad bridge company, whenever it shall properly appear to the County Commissioners of said County, that said company have in good faith expended six hundred thousand dollars in the construction of said railroad bridge, the said bonds to bear date upon the delivery thereof payable twenty years therefrom with semi-annual interest at seven per centum per annum as aforesaid. And the said farther sum of fifty thousand dollars of County bonds to be issued and delivered to the Rail Road Bridge Company whenever it shall appear to the County Commissioners of said County that said company have on good faith completely constructed and erected said Rail Road Bridge, so as to be in good and sufficient order for the uses contemplated, the said bonds to bear date upon the delivery thereof payable twenty years therefrom, with semi-annual interest at seven per centum per annum as aforesaid.

The form in which the question on said proposition shall be taken, shall be by voting thereon by ballots upon each of which ballots shall be written or printed or partly written and partly printed the words "For Rail Road Bonds" or, "Against Rail Road Bonds," and if a majority of the votes cast shall have thereon the words "For Rail Road Bonds," then it shall be deemed and taken in favor of the above proposition entire, and if a majority of said ballots have upon them the words "Against Rail Road Bonds," then said proposition shall be deemed, and taken to be lost.

The question of the adoption of the above propositions shall be submitted to the people of the County of Douglas at a special election to be held for that purpose on the 13th day of July, 1868, at the Florence Precinct, at the Florence School House at Chicago Precinct, at Dentons School House, at McCardle's Precinct at the School House, at Union Precinct, at Knights School House, at Elkhorn Precinct, at the School House, at Douglas Precinct at Cassady's School House, at Omaha Precinct No. 1 at the Douglas House, at Omaha Precinct No. 2, at the Fremont House, at Omaha Precinct No. 3, at David Mounts Boarding House.

A copy of this proposition shall be published for four consecutive weeks immediately preceding the said Election, in the Omaha Republican, Omaha Herald, and Nebraska State Journal, published in Omaha Douglas County Nebraska.

Now therefore notice is hereby given that at a special Election, to be holden for that purpose on the 13th day of July 1868, at Florence Precinct, at the Florence School House, at Chicago Precinct at Dentons School House at McCardle's Precinct, at the School House, at Union Precinct at Knights School House, at Elkhorn Precinct at the School House, at Douglas Precinct at Cassadys School House, at Omaha Precinct No. 1, at the Douglas House at Omaha Precinct No. 2, at the Fremont House, at Omaha Precinct No. 3, at David Mounts Boarding House.

Said Election will be opened at 9 o'clock a. m. and will continue opened until 6 o'clock p. m. in the afternoon of the same day.

The said proposition will be submitted to the voters of Douglas County. The manner of voting thereon is prescribed in said proposition herewith published.

By order of the County Commissioners.

Given under my hand and the seal of the County this 13th day of June, A. D. 1868.

C. A. Downey,
County Clerk.

(Commissioners' Record C, 5).

Omaha, January 28th, 1871.

On motion the Board adjourned to meet Monday, Jany 30, 1871, at 10 o'clock A. M. for the purpose of getting up the Rail Road Bridge Bonds to be issued by the County.

Thos. Swobe,
County Clerk.

(Commissioners' Record C, p. 6).

Omaha, Jany 30, 1871.

Board met pursuant to adjournment for the purpose of making arrangements to issue the Rail Road Bridge Bonds voted by the people of Douglas County, Neb., on the 3d day of July 1868. There was present Messrs. Eicke & Purchase.

On motion the Board adjourned without any definite

action, to meet Saturday Febry 4, 1871, for the transaction of County business.

Thos. Swobe,
County Clerk.

(Commissioners' Record C, p. 10)

Omaha, Febry 18th, 1871.

Board met pursuant to adjournment. Among other proceedings the following:

The following resolution offered by Commissioner Eicke was adopted.

Resolved that Dist. Atty. J. C. Cowin, be and he is hereby directed to draw up "form of Bonds" to be issued by Douglas County to the Rail Road Bridge Company, in conformity with the proposition submitted to the voters of said Douglas County on the 13th day of July 1868, and to submit the same to the Board of County Commissioners at their next meeting Febry. 25th, 1871.

(Commissioners' Record C, 13)

Omaha, March 3d, 1871.

Board met pursuant to adjournment to take action in reference to issuing The Rail Road Bridge Bonds. The Union Pacific Rail Road Co. not having their statement of expenditures on said Bridge fully prepared no action was taken.

Commissioners Eicke, Sherwood, & Purchase were present.

On motion the Board adjourned to meet Saturday March 4th at 2 o'clock p. m.

Thos. Swobe,
County Clerk.

(Commissioners' Record C, 14)

Omaha, March 4th, 1871.

Board met pursuant to adjournment. Among other proceedings the following:

A statement was presented by T. E. Siekles superintendent of the Union Pacific Railroad showing that $325,674.02 had been expended in the actual construction of the Missouri River Bridge. Whereupon the following Resolution offered by commissioner Eicke, was adopted;

Resolved, That Bonds to the amount of $100,000.00 be procured as soon as possible.

(Commissioners' Record C, p. 47).

Omaha, June 17th, 1871.

Board met pursuant to adjournment. Among other proceedings the following:

On motion E. H. Sherwood County Commissioner was authorized to proceed to Chicago and procure Blank Bonds to be issued by Douglas County to the Missouri River Bridge Co.

(Commissioners' Record C, 71).

Omaha Sept. 16th, 1871.

Board met pursuant to adjournment. Among other proceedings the following:

The Union Pacific Rail Road Company, through their attorney, Mr. Poppleton, appeared and demanded one Hundred Thousand Dollars of the Bonds voted by the County to aid in the construction of the Bridge across the Missouri River.

On motion, action was postponed to enable the Commissioners to consult their attorney in regard to the matter.

(Commissioners' Record C, 104).

Omaha, Neb. January 2nd, 1872.

Board met pursuant to adjournment. Among other proceedings the following:

The Board took in consideration the issuing of U. P. R. R. Bonds and without arriving at a conclusion, adjourned to meet to-morrow morning January 3rd, 1872, at 10 o'clock A. M.

Wm. H. Ijams,
County Clerk.

(Commissioners' Record C, 104)

Omaha, Neb. Jany 3rd, 1872.

Board met pursuant to adjournment. Among other proceedings the following:

The Board proceeded with the further investigation of the matter of issuing U. P. R. R. Bridge Bonds, And on motion the Board adjourned to meet Saturday, January 6th, 1872, for the further consideration of the same subject and for the transaction of other business.

Wm. H. Ijams,
County Clerk.

(Commissioners' Record C, 108)

Omaha, Neb. January 8th, 187

Board met pursuant to adjournment. Among o proceedings the following:

On motion the Board adopted the following to wit

Resolved, That the bonds voted for in aid of the c struction of the Union Pacific Rail Road Bridge to amount of $200,000.00 be immediately signed and da January 1st, 1872, to be delivered to the proper auth ties of the Union Pacific Rail Road Company only u condition, that the contract, a draft of which is filed w the County Clerk and deposited in his office, shall be d and legally executed by the proper officers of the Un Pacific Rail Road Company.

Resolved. That in the event of the Execution a delivery by the said Union Pacific Rail Road Company the Contract referred to in the foregoing Resolution, t bonds for the remaining $50,000.00 voted for in aid of t construction of said Bridge, being the last installme provided for that purpose, shall be signed as of the da when the said Bridge shall be completed and finished, as to be in good and sufficient order for the passage trains and issued and delivered to the said Union Paci Rail Road Company as soon as the evidences of the co pletion of said Bridge as aforesaid is properly presented the Board of County Commissioners.

(Commissioners' Record C, 313.)

Omaha, January 26th, 1874.

Board met pursuant to adjournment. Among oth proceedings the following:

The Board delivered to the U. P. R. R. Co. Fif Thousand Dollars in Douglas County Bridge Bonds an took a receipt therefor of which the following is a copy.

Omaha, Nebraska, Jany 26th, 1874.

Received of James H. McArdle Chairman of th Board of County Commissioners of Douglas County N braska, Fifty Thousand Dollars in Douglas County Bridg Bonds in full for all bonds due the Union Pacific Railroa Company under and by virtue of a vote of the people o said County July 13, 1868. Said bonds bear date Jul

1st, 1871 and are each for One Thousand Dollars numbered 201 to 250 inclusive.

Union Pacific Railroad Co.,
By J. W. Gannett,
Auditor.

The following resolution was adopted:

Resolved that A. C. Althaus Treasurer of Douglas County is hereby directed to collect Personal tax of the Union Pacific Railroad Co. for the year 1866 to the amount of $10,000.00 in full for taxes and interest for that year.

The following account was allowed from the County R. R. Bridge Bond Sinking Fund.

U. P. R. R. Co. for $5000.00 of Bridge Bonds at 80c ——$4000.00.

The 25 Douglas County Bridge Bonds each for One Thousand Dollars surrendered by the U. P. R. R. Co. with coupons attached, were burned. (See certificate page 214.)

$20,000.00 of said bonds were paid for by warrant drawn Jany 19, 1874 and $5,000.00 by warrant of this date.

Adjourned to Wednesday Jany 28th, 1874.

(Commissioners' Record C, 314.)

January 26th, 1874.

This is to certify that we have this day burned coupons numbered 1, 2, 3, 4 and 5 cut from Douglas County Bridge Bonds numbered 201 to 250 inclusive. Said coupons were this day detached from the last Fifty Thousand Dollars of bonds before the same were delivered to the Union Pacific Railroad Company. Coupon No. 1 was to have become due Jany 1, 1872 and No. 5 Jany 1st, 1874.
Attest Lewis S. Reed,
[SEAL] County Clerk.

January 26th, 1874.

This is to certify that we have this day burned Douglas County Bridge Bonds numbered 226 to 250 inclusive, bearing date July 1st, 1871, issued to the Union Pacific Railroad Company. Said bonds being twenty-five in number each for One Thousand Dollars with thirty-five coupons (No. 6 to 40 inclusive) attached to each bond.
Attest: Lewis S. Reed,
[SEAL] County Clerk.

State of Nebraska, } ss.
County of Douglas. }

I, John C. Drexel, County Clerk in and for the County of Douglas, State of Nebraska, hereby certify the foregoing to be a true, correct and complete copy of the proceedings of the Board of County Commissioners of Douglas County, Nebraska, as found in
Book B, page 310—Book B, page 330—Book C, page 5
Book C, page 6—Book C, page 10—Book C, page 13
Book C, page 14—Book C, page 47—Book C, page 71
Book C, page 104—Book C, page 104—Book C, page 108
Book C, page 313—Book C, page 314,
of the proceedings of said Board of County Commissioners, so far as the same relates to the issue of $250,000.00 Missouri River Bridge Bonds to the Union Pacific Railway Company, and that the foregoing constitutes all of the proceedings of said Board of Commissioners relative to the issue of said bonds.

Witness my hand and official seal of office this 17th day of April, A. D. 1903.

John C. Drexel,
County Clerk.
[SEAL] By A. J. Webb,
Deputy.

JUDGE MCHUGH: We now offer in evidence a certified copy of a deed from the City of Omaha to the Union Pacific Railroad Company, dated the 27th day of July, 1872, conveying the streets and alleys comprised in the depot grounds of the Union Pacific Railroad Company.

MR. BALDWIN: We object to this as incompetent, irrelevant and immaterial, no part of the objection being urged upon the ground that the original deed or record is not introduced instead of a certified copy.

The certified copy of the deed, as offered above, is read in evidence and is as follows:

City of Omaha
To
The U. P. R. R. Co.

Whereas, on the 14th day of March, A. D. 1871, the Union Pacific Railroad Company presented to the City Council, of the City of Omaha, a petition in the words following, to-wit:

"To the Honorable, the Mayor and City Council of the City of Omaha—

Your petitioner, the Union Pacific Railroad Company, respectfully represent that it is desirous of obtaining the right to use and occupy for the purpose of building thereon its depots and tracks, and other structures necessary for transacting its business at Omaha, all that portion of the public streets and alleys situated within the limits of the depot grounds—so called—agreed to be acquired without cost to the said company by the City of Omaha, and donated to said Company as marked and designated and located by the Engineer of said Company, and represented by the maps on file in said Company's Office, being the maps now exhibited to the City Council, except Tenth, Seventh and Sixth Streets. Your petitioner therefore prays, that said portions of said streets and alleys may be vacated and a grant thereof made to your petitioner for the use of said Railroad Company in maintaining and operating its road with full power and right to place thereon such permanent structures and erections as may be necessary for such use and purpose."

And Whereas, Afterwards on the 28th day of March A. D. 1871, the prayer of said petition was granted, except as to Sixth Street, by a resolution duly passed and adopted in the words following, to-wit:

"Be it resolved by the City Council of the City of Omaha, That the prayer of the petition of the Union Pacific Railroad Company for the vacation of the Streets and Alleys included within the limits of the depot grounds of said Company in Omaha, and adjacent to the west end of said Company's Railroad Bridge over the Missouri River as shown on the maps on file in the office of the Chief Engineer of said Company, be, and the same is hereby granted, and the Mayor is hereby directed to execute a quit-claim conveyance of the said Streets and alleys according to the prayer of said petition.

"Provided, that the Railroad Company shall leave an opening of 60 feet in width for a passage way on 7th Street, and shall grade Tenth Street to Pacific, and along Pacific East to the Bluff and shall also grade Marcy Street to Seventh."

Therefore, this Indenture made this 27th day of July A. D. 1872 by and between the City of Omaha, in the

County of Douglas and State of Nebraska, of the first part, and the Union Pacific Railroad Company, party of the second part.

Witnesseth; That the said party of the first part, pursuant to said resolution of the City Council of the City of Omaha, so passed and adopted on the 28th day of March A. D. 1871, and for the consideration of One Dollar in hand paid, doth hereby remise, release and quit claim unto the said party of the second part, all that portion of the following described Streets in said City of Omaha, to-wit: Marcy, Mason, Pacific, Eighth and Ninth Streets and the alleys contiguous thereto, lying and being within the limits of the Depot grounds of the said Union Pacific Railroad Company adjacent to the West end of said Company's Missouri River bridge, as located by the Engineer of said Company, and as shown by the plat of said Depot Grounds now on file in the office of the City Clerk of said City and in the office of the Chief Engineer of said Company;

To have and to hold said premises unto the said party of the second part, and to its successors and assigns forever.

Provided that said party of the second part, its successors and assigns shall leave an opening of Sixty feet in width for a passage way on Seventh Street, and shall grade Tenth Street to Pacific Street, and along Pacific Street eastward to the Bluff, and shall also grade Marcy Street to Seventh Street.

In Witness Whereof, the Mayor of said City hath hereunto set his hand and affixed the seal of said City the day and year aforesaid.

J. H. Millard,
Mayor of Omaha.

Attest,
J. M. McCune,
City Clerk.

[SEAL]

In presence of
Wm. H. Ijams,
C. H. Byrne.

(I. R. 50c)

State of Nebraska, } ss
County of Douglas. }

On this 27th day of July, A. D. 1872, before me, County Clerk, within and for said County, personally

appeared J. H. Millard, Mayor of the City of Omaha, and acknowledged the execution of the foregoing deed to be his voluntary act and deed as such Mayor and the voluntary act and deed of the said City of Omaha: And I further certify that I know the said J. H. Millard to be the identical person whose name is affixed to the foregoing deed as grantor and who is Mayor of said City.

Witness my hand and official seal the date aforesaid.

[SEAL] Wm. H. Ijams,
County Clerk, as aforesaid.

Recorded July 27th, 1872, at 3 o'clock P. M.
Wm. H. Ijams,
County Clerk.

State of Nebraska, } ss.
County of Douglas. }

I, Harry P. Duel, Register of Deeds, within and for said County and State, do hereby certify, that I have compared the above and foregoing with the original records in said office, and that the same is a full, true and correct copy of the record of a deed given by the City of Omaha to the Union Pacific Railroad Company, as the same appears of record in Book 13, at page 26, of the Deed Records in the office of said Register of Deeds.

In Testimony Whereof, I have hereunto set my hand and affixed my seal of office, at Omaha, this 14th day of April, A. D. 1903.

[SEAL] Harry P. Deuel,
Register of Deeds.
By Frank Christmann,
Deputy.

JUDGE MCHUGH: We now offer in evidence a certified copy of the petition of the Receivers of the Union Pacific Railway Company, in the case of Oliver Ames, Second, et al, Complainants, vs. The Union Pacific Railway Company, and others, defendants, in the Circuit Court of the United States for the District of Nebraska, which petition was filed in said case August 1, 1894: together with the order of said Court, made upon said petition, dated August 1, 1894.

MR. BALDWIN: We object to that as incompetent, irrelevant and immaterial, no part of the objection being

urged upon the ground that the original deed or record i not introduced instead of a certified copy.

The certified copy of the petition of the Receivers etc., as offered above, is read in evidence, and is a follows:

CIRCUIT COURT OF THE UNITED STATES FOR THE EIGHTH JUDICIAL CIRCUIT.

DISTRICT OF NEBRASKA.

Oliver Ames, Second, and others, Complainants.
vs.
The Union Pacific Railway Company and others, Defendants.

YOUR RECEIVERS, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederick R. Coudert, respectfully show to this Court that they have received a notice from J. Pierpont Morgan and Edwin F. Atkins, trustees, as follows:

To the Union Pacific Railway Company and S. S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederick R. Coudert, Receivers.

Gentlemen:

By the terms of the indenture dated April 1st, 1871, (under which the undersigned are trustees) executed by the Union Pacific Railroad Company to secure the issue of Omaha Bridge Bonds of said company, it is provided (Article I) that if the Company shall at any time fail to provide the trustees under said mortgage with all the moneys required to meet matured interest, sinking fund payments and all other obligations arising under the terms and conditions of said indenture, the trustees thereunder shall have the right to fix the tolls to be levied on all property and passengers to be transported over, or which shall use or have the benefit of the said bridge, or the depots connected therewith at Council Bluffs or Omaha, or the lines of track required to connect the said bridge with the railways having their terminus at Omaha and Council Bluffs.

It is further provided in said indenture (Article 2) that the said tolls shall be levied and collected by the Company upon all the property and passengers transported over or using the said bridge, depots or lines and shall constitute a first transportation lien upon all such property and shall be first deducted and retained from the gross sums received from transportation of such property and passengers, and shall be especially set apart and the amount thereof received, deducted and retained in each calendar month, and shall within fourteen days after the end of each calendar month be paid to the credit of the trustees for the time being at such banking house at New York as they shall from time to time designate.

Default having been made in providing the undersigned trustees with the moneys required to meet matured sinking fund payments and other obligations arising under said indenture, we hereby, as such trustees, fix the tolls to be levied upon all property and passengers to be transported over or which shall use or have the benefit of said bridge or the depots connected therewith at Council Bluffs or Omaha or the lines or tracks required to connect the said bridge with the railways having their terminus at Omaha and Council Bluffs, at the same rates as the tolls now levied upon such property and passengers.

As such trustees, we hereby demand that said tolls shall be especially set apart and the amount thereof received, deducted and retained in each calendar month, and that the same shall within fourteen days after the end of each calendar month be paid to our credit at the banking house of Messrs. Drexel, Morgan & Co., at No. 29 Wall Street, in the City of New York, which moneys shall be kept and applied as provided in said indenture of April 1st, 1871, and the agreement supplemental thereto of September 27th, 1871.

New York, July 7th, 1894.

Yours truly,

J. Pierpont Morgan,
Edwin F. Atkins,
Trustees.

Your petitioners state that, to the best of their knowledge, information and belief, the facts stated in the said notice are true; but your petitioners beg leave, on any

hearing of this petition, to refer to the originals or full copies of the indenture of April 1, 1871, and supplemental indenture of September 27, 1871, mentioned in the said notice, for a full and complete statement of the rights of the trustees and the holders of the bonds issued under the said indentures. Your petitioners therefore submit to this Honorable Court this petition, praying for instructions of the Court and for such order as may be proper in the premises.

E. Ellery Anderson,
J. W. Doane,
Oliver W. Mink,
F. R. Coudert,
Receivers.
Jno. M. Thurston,
Solicitor for Receivers.

It is hereby stipulated and agreed by and between the parties that an order may be made as prayed in the foregoing petition.

Dana S. Lander,
Solicitor for Complainants.
W. J. Carroll,
Solicitor for Defendants.

Endorsed: Filed Aug. 1, 1894.
Elmer D. Frank, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES
IN AND FOR
THE EIGHTH JUDICIAL CIRCUIT AND
DISTRICT OF NEBRASKA.

| | |
|---|---|
| Oliver Ames, Second, and others, Complainants. vs. The Union Pacific Railway Company and others, Defendants. | 94–Q. ORDER. |

On filing and reading the petition of S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederick R. Coudert, dated the 7th day of July, 1894, by which petition it appears that the Trustees of the Omaha Bridge Mortgage of the Union Pacific Rail-

road Company, dated the First day of April, 1871, have given notice to the Receivers in conformity with the terms of the said mortgage, that by reason of the failure to provide the said Trustees with the moneys required to meet the maturing sinking fund payments and other obligations arising under said indenture, the said Trustees under the powers contained in the said mortgage desire to fix the tolls to be levied upon all property and passengers to be transported over, or which shall use or have the benefit of said bridge or the depots connected therewith at Council Bluffs or Omaha, and the lines of tracks required to connect the said bridge with railways having their terminus at Omaha and Council Bluffs;

And it further appearing that the said Trustees demand that the said tolls shall be specially set apart and the amount received deducted and retained as in said mortgage provided;

On motion of W. R. Kelly, Assistant General Solicitor.

It is ordered that the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederick R. Coudert, as Receivers, be and they hereby are directed to fix the said tolls at the rate directed by the Trustees of the said mortgage, and from time to time, if required, to alter the same in conformity with instructions which may be given by said Trustees.

It Is Further Ordered, that the said Receivers keep separate accounts of all revenue derived from the tolls to be levied upon all the property and passengers to be transported over or which shall use or have the benefit of the said bridge and depots, as directed by the said mortgage; and after having paid therefrom the amounts required for the service of the said bridge and for its proper operation and maintenance, the said Receivers shall set apart the said tolls and the amount thereof received in each calendar month, and that the said tolls or so much thereof as shall remain after complying with the requirement above stated, shall within fourteen (14) days after the end of each calendar month, or as soon thereafter as the same can by proper accounting be ascertained, be paid to Messrs. Drexel, Morgan & Company at their banking house 29 Wall Street in the City of New York to the credit of the Trustees of said mortgage, to be kept and applied as provided in said

indenture of April 1, 1871, and the agreement supplemental thereto of September 27th, 1871.

This order to remain in force until otherwise ordered.

Elmer S. Dundy,
Judge.

1 Aug. 1894.

United States of America } ss.
District of Nebraska. }

I, GEO. H. THUMMEL, Clerk of the Circuit Court of the United States for the District of Nebraska, do hereby certify the foregoing to be a true and correct copy of PETITION FOR INSTRUCTIONS upon demand of Trustees under Omaha Bridge Mortgage, etc., and Order; in the case of Ames, et al vs. U. P. Railway Co., et al., No. 94 "Q" in the above entitled action as the same appears of record in my office. WITNESS my hand and the seal of said Court at Omaha in said District this 17th day of April A. D. 1903.

[SEAL] Geo. H. Thummel,
Clerk.

JUDGE MCHUGH: We now offer in evidence a certified copy of the following portions of the record in the case of *F. Gordon Dexter et al, vs. the Union Pacific Railway Company et al* in the Circuit Court of the District of Nebraska, being the petition for Instructions of Court as to the Operation of the Omaha Bridge, together with the order entered upon said petition. Also Report of Special Master upon Petition of Union Pacific Railway Company *in re* Omaha Depot Grounds. Also petition with respect to the Union Depot Grounds, filed in said case June 7, 1897, together with the acceptance of service and consent in respect to said the petition filed in said cause, together with the report of the Special Master in respect to said petition, also the order confirming the said report of said Special Master. Also the petition of the Receivers of the Union Pacific Railway Company for authority to enter into a contract with the Omaha Bridge and Terminal Company, filed in said cause. Also the order referring said petition to the Special Master. Also the answer of the Chicago, Burlington & Quincy Railroad Company to said petition, and Exhibit D, attached to said answer, being the Decree of

the District Court. Also the answer of the city of Omaha to said petition. Also the motion of the Receivers aforesaid for the dismissal of the said petition, and the order dismissing the same. Also the opinion of Judge Sanborn filed in said case, upon the report of the Special Master.

MR. BALDWIN: To all, each and every of which items of evidence the defendants object as incompetent, irrelevant and immaterial, no part of the objection being urged upon the ground that the original records are not introduced or offered in evidence instead of certified copies.

The respective certified copies of the records, as contained in the offer last made upon the part of complainants, are here read in evidence, and are as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

F. Gordon Dexter, et al.,
vs
Union Pacific Ry. Co. et al. } No. 48 Doc. R.

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IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

Oliver Ames, Second, and others, Complainants,
vs
The Union Pacific Railway Co., and others, Defendants.

F. Gordon Dexter and Oliver Ames, 2nd, Trustees, Complainants,
vs
The Union Pacific Railway Co., and others, Defendants.

Your receivers, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederick R. Coudert, respectfully show to the Court that on the first day of August, 1894, there was entered in the suit first herein mentioned a certain order, being order No. 108 of the printed record of said cause, appearing in volume 4 of said record at pages 467 to 469, inclusive, thereof, which order and the petition on which the same is based, for greater certainty is hereby referred to.

That since the entry of said order your Receivers have complied with the directions therein given them and have ascertained the amount due to the Trustees as therein provided and paid over all of said amounts to said Trustee earned thereunder up to the first day of December, 1894.

That on the twenty-first day of January, 1894, there was commenced in this Court a certain suit for the foreclosure of a mortgage given by the Union Pacific Railroad Co., which suit is the same suit secondly above herein entitled, under which said last mentioned suit your Receivers, being the same persons who had been appointed

as Receivers in the said Ames suit first hereinbefore mentioned, were also by this Court appointed Receivers in the said Dexter suit secondly above named of all of the properties and franchises of the Union Pacific Railway Co. and of the property thereof embraced or described in the mortgage complained upon in the said bill of complaint in said last named suit; and that your Receivers were in and by the order of their appointment directed to continue, as such Receivers, the operation of the properties of the said Union Pacific Railway Co., to which order of their appointment for greater certainty and particularity of statement, your petitioners do hereby refer.

Your petitioners further represent that other bills to foreclose mortgages upon other parts and parcels of the property of the Union Pacific Railway Co. have been filed in other jurisdictions, to-wit: in the states of Kansas, Missouri and Colorado, so that it becomes desirable that your Receivers should be further advised or ordered in respect to the payment of any moneys to the Trustees as provided in the said order No. 108 before mentioned.

Your Receivers therefore submit to this Court this their petition praying that the Court may give them such instructions, directions and orders in the premises as may be meet and proper so that they may be directed whether or not they shall continue the tolls imposed upon the bridge traffic at the rates heretofore prevailing and as to whether or not they shall continue to keep accounts and make payments in respect to the revenues derived from the said bridge property as they were heretofore ordered and directed in respect thereto under the said order numbered 108, or on such directions in the premises as to the Court may seem proper.

New York, February 15, 1895.

The Receivers aforesaid by

[SIGNED] Jno. M. Thurston,
Their General Solicitor.

New York, February 15, 1895.

Received copy of the foregoing petition of the Receivers and consent that the same may be submitted to the Hon. Walter H. Sanborn, Judge of the Eighth Judicial Circuit, at Chambers at St. Louis, Missouri, on the

23rd day of February, 1895, or as soon thereafter as c
sel can be heard.

Seward, Guthrie, Morawitz & Steele,
Solrs. for J. P. Morgan & Edward F. Atkins,
Truste

Winslow S. Pierce,
Sol. for F. Gordon Dexter and Oliver Ames, 2nd.
Truste

Endorsed: Filed Feb 23 1895.
Elmer D. Frank, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR
DISTRICT OF NEBRASKA.

Oliver Ames, Second and Others,
Complainants,
vs
The Union Pacific Railway Co., and others,
Defendants.
94–Q.

F. Gordon Dexter and Oliver Ames, 2nd, Trustees,
Complainants,
vs
The Union Pacific Railway Co., and others,
Defendants.
48–R.

On filing and reading the petition of S. H. H. Cl
Oliver W. Mink, E. Ellery Anderson, John W. Doane
Frederick R. Coudert, dated the 15th day of Febru
1895, by which petition it appears that the Trustee
the Omaha Bridge mortgage of the Union Pacific Railr
Co., dated the 1st day of April, 1871, on or about
7th day of July, 1894, gave notice to the Receivers in c
formity with the terms of said mortgage fixing at the r
then existing the tolls to be levied upon all property
passengers to be transported over or which shall use
have the benefit of said bridge or the depots connec
therewith at Council Bluffs or Omaha and demandi
that the said tolls shall be specifically set apart and

amount received deducted and retained and paid over for account of said Trustees as in said mortgage provided.

And it further appearing that upon the petition of said Receivers dated the 7th day of July, 1894, in the said suit of Oliver Ames, 2d, and others against the Union Pacific Railway Company and others, an order was entered in the said suit on the first day of August, 1894, whereby the said receivers were directed to fix said tolls at the rate directed by the Trustees of the said mortgage and to keep separate accounts of all revenue derived from the said tolls and after having deducted therefrom the amounts required for the service of said bridge and for its proper operation and maintenance, to set apart the said tolls and the amount received in each calendar month, and to pay over the said tolls or so much thereof as should remain after complying with said requirement; to pay the same within fourteen days after the end of each calendar month, or as soon thereafter as the same could by proper accounting be ascertained to Messrs. Drexel, Morgan & Co., at their banking house, in the City of New York, to the credit of the trustees of said mortgage, to be kept and applied as therein provided.

And it further appearing to the Court that the Complainants in each of the above entitled suits and the said trustees, J. Pierpont Morgan and Edward F. Atkins, Trustees under the said Omaha Bridge Mortgage and other parties interested in this proceeding have been notified of the pendency of this petition and have consented that the same shall be submitted to the Court on the 23rd day of February, 1895, or as soon thereafter as counsel can be heard.

Now, the Court being fully advised in the premises on motion of John M. Thurston, Solicitor for the Receivers, it is ordered that the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederick R. Coudert, as Receivers in the above entitled case, be and they are hereby directed to continue the said tolls at the rates aforesaid; that the said Receivers keep separate accounts of all revenue derived from the tolls to be levied on all property and passengers to be transported over and which shall use or have the benefit of said bridge and depots, as directed by the said mortgage; and after having paid therefrom the amounts

required for the service of the said bridge and for its proper operation and maintenance, the said Receivers shall set apart the said tolls and the amount thereof received in each calendar month, and that the said tolls or so much thereof as shall remain after complying with the requirement above stated, shall within fourteen days after the end of each calendar month, or as soon thereafter as the same can by proper accounting be ascertained, be paid to the Trustees under the Indenture of April 1, 1871 executed by the Union Pacific Railroad Co. to secure the issue of said Omaha Bridge bonds, or for account of said Trustess to such depository as they may in writing direct, to be kept and applied as provided in said Indenture of April 1, 1871, and the agreement supplemental thereto of September 27, 1871.

This order is to remain in force until otherwise ordered, but nothing herein recited or ordered shall be deemed finally to adjudicate or conclude the rights of the parties hereto in respect to said bridge or the subject matter of this order, except as to any payments which shall actually have been made under the authority of this order prior to any modification or vacation thereof; and the right is hereby reserved to any of the parties hereto to apply to vacate or modify this order.

And the said Receivers are hereby further directed to pay over to said Trustees the said bridge tolls and revenues accruing since the first day of December, 1894.

Dated February 23, 1895.

Walter H. Sanborn,
Circuit Judge.

Entry of above Order consented to by us,
J. Pierpont Morgan and
Edwin F. Atkins,
Trustees Omaha Bridge Mortgage.
By Seward, Guthrie, Morawitz & Steele,
Solicitors.

F. Gordon Dexter and
Oliver Ames, Second,
Trustees.
By Winslow S. Pierce,
As Solicitor.

Oliver Ames, Second, and others,
Plaintiffs.
By D. S. Lander,
As Solicitor.

In the Circuit Court of the United States for the District of Nebraska.

Oliver Ames, Second, et al.,
Complainants,
vs
The Union Pacific Ry Co., et al.,
Defendants.

Dexter, et al., Trustees,
Complainants,
vs
The Union Pacific Ry Co., et al.,
Defendants.

To the Honorable the Circuit Court:

I hereby certify that the following constitutes all the papers and proceedings in the matter of the petition of the Union Pacific Railway Company in the matter of dissolution of Omaha Union Depot Company and division of its assets:

Petition of petitioner,
Acceptance of service and consent,
Notice to file exceptions to report, and
My report herein.

And that after due notice no exceptions to said report have been filed.

Wm. D. Cornish,
Special Master.

Omaha, April 2, 1897.

In the Circuit Court of the United States for the District of Nebraska.

Oliver Ames, 2nd, et al
Complainants.
vs
The Union Pacific Ry Co., et al
Defendants.

F. Gordon Dexter, et al, Trustees,
Complainants.
vs
Tne Union Pacific Ry Co., et al
Defendants.

PETITION Of The Union Pacific Railway Co., praying for orders and directions in respect to perfecting title to depot grounds and terminal facilities at Omaha, Nebraska.

To the Honorable the Judges of the Circuit Court of the United States in and for the District aforesaid:

Your petitioner respectfully represents to the Court herein the following facts in respect to the ownership, occupation and encumbrances upon or affecting the grounds known as the depot grounds in the City of Omaha, Nebraska:

1. The Union Pacific Railroad Company acquired title to a large number of lots and blocks and to certain parts of streets and alleys in the City of Omaha, about the year 1872; which lots and blocks and parts of streets and alleys aggregated in amount 28 acres or thereabouts: That said property was acquired under and by virtue of certain agreements with the City of Omaha and county of Douglas, Nebraska, and under certain conveyances made by the said City of Omaha and by Alvin Saunders, trustee, to said Union Pacific Railroad Company; which agreements and conveyances will more particularly and fully state the terms and conditions under which it has been claimed the said Union Pacific Railroad Company obtained and held title to said lands: Reference is hereby had to the said several agreements and conveyances and leave is prayed that they and each of them may be read and exhibited on the hearing hereof, and that they may be made a part hereof on such hearing with the same effect as if each thereof was herein pleaded and set out at length.

2. That about the year 1872 said Union Pacific Railroad Company entered into the possession as owner and claimed title to said lots, blocks, streets and alleys, and thereafter continuously occupied said premises, and from time to time placed thereon large numbers of tracks, turnouts, switches, its freight station, built thereon a passenger station and expensive and valuable bridges and other facilities used for the operation of its line of railroad; that the

east line of said grounds was adjacent to the immediate approaches to the bridge of the Union Pacific Railroad Company over the Missouri River, and that said grounds constituted a portion of the line of railroad of said railroad company between the main line thereof and the bridge over the Missouri River and the eastern terminus of said railroad at Council Bluffs, Iowa, and constituted and were and are a part of the premises since that time and now known as the Bridge Division of The Union Pacific Railway Company's property.

3. That for many years after acquiring said premises The Union Pacific Railway Company maintained on a part thereof its freight station for the receipt and delivery of freight at the City of Omaha, and that on another part of the same grounds it for many years maintained and operated a large and expensive station for passenger service, and operated and maintained the whole of said grounds for its railroad use and purpose for receiving, delivering and transferring freight from and to connecting lines of railroad, and, generally, in the transaction of its business as a railroad at the City of Omaha.

4. That after the acquirement of the title to said premises as aforesaid the Chicago, Burlington & Quincy Railroad Company, by itself or through its constituent companies, acquired title to certain grounds on the south side of and adjoining the said premises of the Union Pacific Railroad Company; which said grounds were acquired by said Burlington Company for use as a passenger station and terminal facilities for its railroad at the City of Omaha.

5. That The Union Pacific Railway Company, upon its organization by that name, acquired and succeeded to all of the rights, privileges and property of said Union Pacific Railroad Company in and to said lands.

6. That about the year 1889 the officers and agents of the Union Pacific Railway Company and of the said Chicago, Burlington & Quincy Railroad Company found that the passenger and freight facilities upon said premises and upon the premises of said Burlington Company were inadequate and insufficient to the proper handling and transaction of the business of said railroads thereon, and that upon conferences between said officers of said

companies it was deemed to be for the manifest good of each of said companies and for the public good that an arrangement should be made for erecting and constructing, upon said premises of the Union Pacific in part and in part upon the premises of the said Burlington Company of a new passenger station with tracks sufficient to accommodate the passenger business of the said two railway companies, and of such other railway companies as might be admitted to such proposed new passenger station; and that thereupon, about the second day of May, 1889, said Union Pacific Railway Company and said Chicago, Burlington & Quincy Railroad made and executed a certain Preliminary Memorandum of Agreement, which was as follows:

"Preliminary Memorandum of Agreement, made this second day of May, 1889, by and between the Union Pacific Railway Company, a corporation of the United States, party of the first part, and the Chicago, Burlington & Quincy Railroad Company, a corporation of the state of Illinois, party of the second part, WITNESSETH,

WHEREAS, the respective railroads of the parties hereto terminate at or run into the city of Omaha, Nebraska, and in order to save the unnecessary expense and inconvenience attending the construction and operation of independent depot buildings, and to facilitate the public convenience and safety in the exchange of passengers and baggage between the railroads of the parties hereto, the said parties desire to unite in the construction of a Union Passenger Depot in the said City of Omaha; and

WHEREAS, each of the parties hereto own certain lands in the said city adjacent to each other and suitably located for the purposes of said depot,

NOW THEREFORE, it is mutually agreed by and between the said parties, as follows:

FIRST: That they will cause to be incorporated a company under the name of the "Omaha Union Depot and Railroad Company" with such an amount of capital stock and bonded debt as may be found necessary for the construction of the said depot and appurtenances.

SECOND: That the board of directors of the said Depot Company shall consist of six persons, three of whom shall be nominated by each of the parties hereto, and that in case the said Board shall be unable to agree upon any matter coming before it, the same shall be sub-

mitted to arbitration, in the manner hereinafter prescribed for the settlement of differences arising under this contract.

THIRD: The parties hereto mutually agree that each will subscribe for one-half of the capital stock of the said Depot Company and will pay for the same in such installments and at such times as the same may be called for by the board of directors of the said Depot Company.

FOURTH: The said parties further agree that when the said Depot Company shall be organized each will convey to it, by lease or otherwise, upon terms to be mutually agreed upon by the parties hereto, the said lands in the City of Omaha, hereinbefore referred to, and that the valuation of said lands shall be fixed by mutual agreement, or, in case of a failure to agree, by arbitration; and also that said parties will cause to be done in such manner as counsel may advise whatever may be necessary to vest in the said Depot Company the full and complete title to the said lands.

FIFTH: The parties hereto further mutually agree that they will contract with the said Union Depot for the use of the said depot by all their passenger trains in and out of the said City of Omaha, for a term of years which shall not be less than the term of the mortgage bonds to be issued by the said Depot Company, at an annual rental to be hereafter fixed, and to be borne, for the first year, two-thirds by the Union Pacific Railway Company and one-third by the Chicago, Burlington & Quincy Railroad Company, and to be paid semi-annually, at such dates as may be necessary to meet the interest upon the bonds to be issued by the said Depot Company.

At the end of the first year, and of each year thereafter the division of the said rental shall be readjusted, and each party hereto shall pay, for the next ensuing year, such a proportion thereof as the number of its cars and engines passing into and out of the said depot has in the previous year borne to the whole number of cars and engines belonging to both parties passing into and out of the said depot during the preceding year.

SIXTH: The management of the said depot and of the tracks and grounds belonging thereto shall be in the hands of the board of directors of the said depot company, who shall appoint the necessary officers and agents there-

for; but if any of said officers and agents shall fail to conduct the business of either of the parties hereto in a satisfactory manner, the party aggrieved shall have the right to request the removal of the offending officer or agent, which request shall be complied with by the said Depot Company.

SEVENTH: The expenses of management, operation and maintenance of said depot, grounds and tracks, including rentals paid for lands leased, taxes, insurance, etc., shall be divided between the parties hereto in the proportion that the number of cars and engines for each passing into and out of said depot bears to the whole number of cars and engines belonging to both parties passing into and out of said depot.

EIGHTH: Any income received by the said Depot from rentals of any part of said depot buildings or appurtenances to either of the parties hereto for its exclusive use, or from other railroad companies, or parties, shall be applied by said Depot Company, first, to the payment of the expenses of management, operation and maintenance; and, second, to reduce the amount of rental payable by the parties as provided in Article Five hereof. The rental remaining due after such application of income, if any, shall be paid by the parties hereto in the proportions set out in Article Five, and any surplus of said income over and above the said expenses and rental shall be equally divided between the parties hereto.

NINTH: It is hereby mutually agreed that other railroad companies may be admitted to the use of said depot, upon terms to be fixed by the directors of said Depot Company.

TENTH: If at any time a difference of opinion shall arise in respect to the interpretation of this agreement or as to the rights or duties of either party thereunder, or if there shall be a tie vote upon any question coming before the board of directors of the said Depot Company the question in dispute shall be referred to a board of arbitrators, consisting of three competent disinterested persons, one of whom shall be chosen by each of the parties hereto, the two thus chosen to select the third. The party desiring such arbitration shall give written notice of the same to the other party, setting forth therein, definitely, the point or points in dispute, and the name of the person

selected by it to act as arbitrator. If the party on whom such notice is served, shall not, within fifteen days after such service, name a second person to act as arbitrator, the party serving such notice shall select the second, and the two thus chosen shall select the third. The board of arbitration thus chosen, by either method, shall proceed at once to hear, consider and determine the matter submitted to them, and shall give to each of the parties notice, which shall not be less than ten days of the time and place appointed, and shall proceed with the hearing, unless for good cause of which the arbitrators, shall be the judges, it shall be postponed to some later day or days. The decision of the board of arbitrators thus constituted by either method, or that of a majority of the persons composing the same, shall be made in writing and a copy thereof delivered to each of the parties hereto, who expressly agree that such decision shall be final and conclusive upon them in all matters thus submitted.

ELEVENTH: It is mutually understood and agreed between the parties hereto that—for the considerations hereinbefore set out, each of the said parties shall have the use of the said Union Depot for any and all roads owned or controlled by it, and that in the division of rental and expenses, as hereinbefore provided for, the cars and engines of such roads shall be counted as the cars and engines of the parties hereto to which the said road may belong.

TWELFTH: It is also agreed that the parties hereto will execute such other and further papers as may be found necessary to carry into effect the objects of this preliminary memorandum.

IN WITNESS WHEREOF, the parties hereto have set their hands this second day of May, 1889.

Union Pacific Railway Company,
By C. F. Adams,
President.

Attest: Alex. Millar,
Secretary.

Chicago, Burlington & Quincy Railroad Company,
By C. E. Perkins,
President.

Attest: T. S. Howland,
Secretary."

7. That on the same day the said Union Pacific Railway Company and the said Burlington Company made a certain other Memorandum of Agreement, which was as follows:

"This Memorandum of Agreement, made this second day of May, 1889, between the Union Pacific Railway Company, a corporation organized under the laws of the United States, and the Chicago, Burlington & Quincy Railroad Company, a corporation organized under the laws of the State of Illinois, Grantee and Assignee of the Burlington & Missouri River Railroad Company in Nebraska.

WITNESSETH:

WHEREAS, The Union Pacific Railway Company owns or controls a considerable plat of ground in Omaha, suitable for a Union Passenger Station in that city.

And Whereas, the Chicago, Burlington & Quincy Railroad Company owns a smaller plat of ground contiguous to the above, and also suitable as part of the grounds necessary for a Union Passenger Station at said City of Omaha,

Now, each of the parties hereto hereby agree that it will convey by fee simple or lease, to a Union Depot Company to be organized at Omaha, Nebraska, such part as it may own of the grounds necessary for a Union Passenger Station near Tenth and Mason streets in said city of Omaha, and will join each with the other, on an equitable basis and construct a Union Passenger Station at said City of Omaha, Nebraska, of suitable size and character to accommodate all the roads now running into Omaha or Council Bluffs that will agree to accept the use of such Passenger Station jointly with others on an equitable basis, and will begin the construction of said station within thirty days after the city of Omaha has given acceptable assurance that it will at its own expense, build a viaduct over Tenth street from Mason street north to such point as said city may decide to strike the present grade of Tenth street; and that the construction of said Union Passenger Station shall be pushed as fast as the city shall construct said viaduct; and will complete the depot and open the same for the use of all companies that have agreed to accept such use, on the above terms, within

reasonable time from the completion of the above described viaduct.

IN WITNESS WHEREOF, the parties hereto have set their hands this second day of May, A. D. 1889.

Union Pacific Railway Company,
By C. F. Adams,
President.

[SEAL]

Union Pacific Railway Company,
Attest: Alex Millar,
Secretary.

1889.

Chicago Burlington & Quincy Railroad Company.
By C. E. Perkins,
President.

Attest: T. S. Howland,
Secretary.

[SEAL]

Chicago, Burlington & Quincy Railroad Company.

8. That thereafter, and about the 13th day of August, 1889, in pursuance to the terms of said Preliminary Memorandum of Agreement there was created and formed a certain corporation known as the Omaha Union Depot and Railroad Company, under the laws of the State of Nebraska, for the purpose of constructing, maintaining and operating union freight and passenger depots and the tracks, structures appliances and appurtenances incident and necessary to the use of the same, at and within the City of Omaha, and to the exterior boundaries thereof, in Douglas County, Nebraska, with power to locate, establish, construct, furnish, maintain, operate and enjoy union freight and passenger railway depots at such point as may be determined upon, with such tracks, side-tracks, turnouts, switches, offices and structures as may be deemed necessary, and to take, acquire and hold real, personal and mixed property necessary or convenient for the execution of said business and the accomplishment of the objects and purposes of said corporation, at such place or places within the boundaries of the City of Omaha and beyond the same in the county of Douglas as might be necessary for the use of said railway companies making said city a

point of delivery of such passengers; providing for the location of the termini of the railroads to be built by said corporation, and that its capital stock should be $1,500,000, in shares of $100 each, subscribed and paid as required by the board of directors of said Company in pursuance to the laws of the State of Nebraska, providing that said corporation should begin its existence on the 13th day of August, 1889, and continue for 50 years thereafter; which corporation was so formed under and in pursuance to the laws of the State of Nebraska, and that the Articles of Incorporation thereof and Certificate of Organization thereof were duly filed and made in all respects as required by the laws of the State of Nebraska as will more fully appear by reference to said articles of incorporation and certificate of organization, exemplified copies of which it is prayed may be read and exhibited on the hearing hereof.

9. That upon the creation of said corporation there was subscribed the amount of $150,000.00 of the said capital stock by or for said Union Pacific Railway Company and said Chicago, Burlington & Quincy Railroad Company, each of said corporations subscribing for one-half thereof; and that immediately there was paid into the Treasury of said Omaha Union Depot Co., ten per cent of the amount of the capital stock so subscribed, to-wit: $15,000,—the said Burlington Company and the said Pacfic Company each paying $7,500. And that thereafter upon requisitions and calls made by said Omaha Union Depot Company each of said corporations under said agreement of April 1st, 1890 (The Union Pacific Railway Company, and the Chicago, Burlington & Quincy Railroad Company) advanced or loaned or caused to be advanced or loaned a sum approximating $259,500, so that the total amount advanced or loaned the said Omaha Union Depot Co., on said account in the aggregate amounts to the sum of $519,000.

10. That on or about the 1st day of April, 1890, a certain agreement was made and entered into between said Omaha Union Depot Company, as party of the first part, The Union Pacific Railway Company, as party of the second part, and the Chicago, Burlington & Quincy Railroad Company as party of the third part;

under which said agreement said party of the second part and the Burlington Company, amongst other things, agreed to aid in the construction of the depot factlities and plant of said Omaha Union Depot Company by furnishing and advancing to it from time to time such sums of money as may be required to pay for lands and for the labor and material necessary to construct and complete such depot and its appurtenances, each of them to furnish one-half of such advances upon written requisitions therefor signed by the President of the said Depot Company and countersigned by its Treasurer; said Omaha Union Depot Company agreeing on its part to repay the parties of the second and third part for all sums so advanced by them respectively by executing and delivering to them its first mortgage bonds, for the full amounts advanced, with interest from the dates when advances were made, at the rate of six per cent per annum; and also the shares of its full paid capital stock to an amount equal to such bonds and fifty per cent in addition that is to say, for each $1,000 of bonds there should be issued and delivered $1500 of stock. Which agreement further described the terms and conditions of said bonds, and the time when and manner in which they might be paid: Said Depot Company agreed that it would provide and build, for the use of said railroad companies on or before January 1st, 1892, a passenger station and appurtenances, in accordance with plans for the construction of the same as approved by the said Pacific and Burlington Companies: It was further provided in said agreement that a part of the lands upon which the depot was to be located were owned by the Pacific Company and part by the Burlington Company, and that by reason of encumbrances thereon clear titles could not be conveyed to the depot Company, and that thereupon it was arranged that the parties of the second and third parts respectively, should execute bonds for deeds or agreements to convey said lands to the depot company when and as soon as the titles thereto could be perfected in said depot company free and clear of any and all encumbrances and at valuations thereof which had been fixed and agreed upon between said Burlington and Pacific Companies; and that the cost of said lands to the Depot Company should be provided by the said Pacific and Burlington Companies, each one-half thereof; and

that in the meantime and until the titles to said la
could be so perfected in the Depot Company, leases ther
in such form as counsel might advise should be execu
to the Depot Company, in which the rent reserved to
paid by the said Depot Company should be at the rate
six per cent per annum upon said valuations; such rent
begin January 1st, 1892, and be payable semi-annua
thereafter during the terms of such leases.

Said agreement further therein provided for a le
of all of the property of said Union Depot Company
said Pacific and Burlington Companies as tenants in co
mon of the Union Depot and the premises and proper
appertaining thereto, including its tracks and rights
way and all depot grounds and lands, franchises a
properties of all sorts belonging or appertaining theret
as well as all such species of property which the Dep
Company might thereafter acquire or own, upon the ter
and conditions in said agreement fully and particular
set forth; said agreement further in terms providing f
the payment of taxes, for the payment for repairs a
maintenance, for betterments, and for the admission
other railroads into the said depot, and contained ma
other covenants and conditions in respect to the maint
nance and operation of said Union Depot when co
structed, all of which will more fully appear by referen
to said agreement; which it is prayed may be exhibit
and read on the final hearing hereof, with the same effe
as if pleaded at length.

11. That the certificates for the stock so subscribe
for in said Omaha Union Depot Company by said co
panies respectively have never been issued, and sa
Omaha Union Depot Company has never issued any of i
bonds as provided by the terms of said agreement; an
neither said Burlington Company nor said Pacific Co
pany has made executed or delivered to the said Dep
Company leases for the grounds set apart by said co
panies respectively for the use of said Omaha Union Dep
Company; and neither of said Burlington and Pacif
Companies have made or delivered to the said Depot Co
pany bonds for deeds providing for the conveyance to sa
Omaha Union Depot Company of the grounds set apa
therefor by said companies respectively nor have any co

veyances of said grounds been made to said Depot Company by said railway companies.

12. That about the time of the making of said agreements between said Depot Company and said Burlington and Pacific Companies as hereinbefore stated, said Union Depot Company in fact, under the terms of said agreements, went into the occupation and possession of that portion of the grounds of said Burlington Company and Pacific Company, respectively, which had been set aside by said companies for the use of said Union Depot Company, and commenced thereon the construction of a passenger station and the other facilities, structures, tracks and appurtenances which by the plans approved by each of said companies at that time were deemed necessary and from thence hitherto said Depot Company continued in the occupancy and possession of all of the lands so set apart by said Burlington Company and Pacific Company respectively; paying rent therefor on the valuation thereof, as will more fully appear in the accounts of said Depot Company and said Burlington and Pacific Companies respectively.

That the said Omaha Union Depot Company, amongst other things was required by the plans for the structures to be made by it to build and construct a viaduct over the tracks of the depot company, the Burlington Company and the Pacific Company then existing and thereafter to be laid, which structure it completed before January 1st, 1892, at a cost approximating $198,000; it commenced the construction of a building to be used for a union passenger station, mail and express buildings, train sheds, and expended therein and upon the plans and specifications thereof, and in general expenses in connection therewith, about the sum of $187,000. That it further thereafter expended on certain work entirely located upon that portion of the property set apart for its use by the Union Pacific Railway Company upon said street crossing approximately $17,500; it acquired additional real estate at a cost of approximately $115,000 and expended in all in and about said work, about the sum of $526,532.99:

13. Prior to the commencement of the work of construction by said Omaha Union Depot Company, an ordinance of the City of Omaha was passed, calling for a special election to be held in the City of Omaha on the 28th

day of November, 1889, for the purpose of submitting to the voters of said city a proposition for the issuance of $150,000 in bonds of the city of Omaha to the Omaha Union Depot Company, to aid it in the construction of a railway passenger depot and its railroad, railroad tracks, side-tracks, turnouts, switches, offices, structures and approaches leading thereto, necessary to the proper use and enjoyment thereof as a union railway passenger depot in the City of Omaha, upon grounds situate between Pacific street and Leavenworth street and between fifth street and 13th street; which ordinance provided the terms and conditions upon which said bonds were to be issued and delivered and that at the special election held thereunder a sufficient majority of the voters of said City of Omaha voted in favor of said proposition, and the bonds were declared by the proper officers of said city to have been carried in the manner provided by law.

14. That about the 26th day of December, 1889, the Mayor and City Council of the City of Omaha passed a certain ordinance providing for the conveyance to said Omaha Union Depot by quit-claim deed all of the estate, right, title and interest, reversion or reversions, remainder or remainders, and estate of said city, in law and equity, in and to all of the premises conveyed or intended to be conveyed to said Union Pacific Railroad Company by said deed of Alvin Saunders hereinbefore referred to, upon the conditions in said ordinance written and specified.

15. That upon the faith of said ordinance and relying thereon, the Pacific Company and the Burlington Company and said Omaha Union Depot Company proceeded in and about the construction of said work and the expenditure of moneys for said purpose; and were proceeding to comply with all of the terms and conditions of said ordinance, and the officers of the city of Omaha were proceeding to the making, issuance and delivery of said bonds and deeds for said premises, when a suit was commenced in the District Court of Douglas County, Nebraska, by one Ernest Stuht against the City of Omaha and said Omaha Union Depot Company, the object and purpose of which was to enjoin and restrain the issuance of said deeds and of said bonds as authorized by the proceedings hereinbefore referred to; which said injunction was sued

out about the 1st day of January, 1892, and about the time at which said conveyances and bonds were by the terms of said ordinance deliverable to said Omaha Union Depot Company. The said injunction sued out in said suit was on final hearing made perpetual, and the City of Omaha, until the compliance with the rules laid down by the District Court of Douglas County in its decree, was enjoined from making, issuing or delivering said bonds or from making and executing said conveyances hereinbefore referred to.

16. That during the work of construction, temporary facilities had been provided, so far as might be done accommodating the public and the said railroads, by a temporary passenger station and facilities, which of themselves were manifestly insufficient for the permanent transaction of the passenger business at Omaha at said station; but which pending the construction and completion of said Union Depot and the consideration and determination of said questions were used.

17. That neither the Omaha Union Depot Company nor said Burlington or Pacific Companies has since the cessation of work on said premises re-commenced or done anything in the way of continuing the construction of said Omaha Union Depot, upon the plans and specifications thereof, or to carry out the plans for the construction of said depot, which were contemplated by said companies at the time of making the several agreements hereinbefore referred to.

18. That the lands set apart for the use of said Omaha Union Depot Company in said scheme by the Union Pacific Railway Company constitute about one-half of the entire grounds conveyed to it by said Alvin Saunders' deed hereinbefore referred to, and constitute a very valuable portion of the terminal facilities of the Union Pacific Railway at Omaha, very much in excess of the tract of land set apart by said Burlington Company for the use of said Omaha Union Depot Company.

19. That said Omaha Union Depot Company, after its organization by purchase and by condemnation, acquired additional real estate along or adjacent to the boundary line between the properties of said Union Pacific and of said Burlington Company at the cost above stated,

and all of which grounds are necessary to said Omaha Union Depot Company and are exceedingly valuable either to said Burlington Company or to said Pacific Company.

20. That it is absolutely necessary to the proper performance of the duties of said Pacific Company as well as said Burlington Company that proper facilities be provided at Omaha for the transaction of the passenger business of said companies: The temporary structure now used by said Omaha Union Depot Company is wholly insufficient and inadequate for the proper discharge of the duties of either of said railroad companies to the public or for their own uses at said station: That said temporary structure and facilities have been condemned and declared to be wholly insufficient for said purposes, by the proper officers of the City of Omaha,—the proceedings of which City in respect thereof will be shown on the hearing hereof.

21. That by reason of the insolvency of The Union Pacific Railway Company and for the other causes set forth in the bill in said Ames cause herein entitled all of the moneys, properties, rights and credits of the said Union Pacific Railway Company passed into the hands of the Receivers herein appointed on the 13th of October 1893, and from thence hitherto the said Union Pacific Railway Company hath not had any moneys or power wherewith or whereby it might or could further carry out or perform the engagements and conditions of the said contracts or agreements hereinbefore referred to.

22. That about the 21st of July, 1896, the Burlington Company addressed to S. H. H. Clark, President of The Union Pacific Railway Company and to the Receivers of said Union Pacific Railway Company and the Omaha Union Depot Company through Thomas L. Kimball, its President a communication as follows:

"Gentlemen:

In view of the notorious need and existing necessity for adequate depot and station accommodations at Omaha, Nebraska, which lack is one of long continuance, and has become a burden from which relief must speedily be had, the Chicago, Burlington & Quincy Railroad Company calls your attention to the following facts: 1st By contracts made on the 2nd day of May, A. D. 1889, between the

U. P. Ry. Co., and the C. B. & Q. R. R. Co., acting through their respective Presidents, it was agreed that there should be organized the Omaha Union Depot Company for the purpose of erecting at Omaha, Nebraska, a Union Passenger station for the accommodation of railroads entering at that point. In said organization, the two railroads named were to be mutually and equally interested, and were to make conveyance by lease or otherwise, of the lands situate in the city of Omaha, owned or controlled by them respectively, needed for such purpose.

2nd. That thereafter, the said Omaha Union Depot Company, being duly incorporated, and the said named railroad companies being equal shareholders therein a contract was made between said Omaha Union Depot Company, on the one hand, and the said railroad companies on the other, by the terms of which the said Depot Company agreed to erect a Union Depot at 10th and Mason streets in said City of Omaha, and maintain the same, upon lands in part owned by the C. B. & Q. R. R. Co., and in part owned by the said U. P. Ry. Co., the latter being lots and lands donated to said U. P. Ry. Co., under what is known as the Alvin Saunders Trust deed, under the terms of which the titles to said lots and lands were to revert to said donor, the City of Omaha, if at any time diverted from said depot use. Such depot facilities were for the use of the two railroads named, and for such other railroads as might be desirous of advantaging themselves of them on fair and equitable terms.

3rd. Under the terms of said contract, assessments were made upon the stock of said Omaha Union Depot Company and at divers times there was paid into the treasury of said Depot Company about the sum of five hundred and twenty thousand dollars, which sum was equally contributed by the U. P. Ry. Co., and the C. B. & Q. R. R. Co., and has been expended upon the construction of the 10th street viaduct upon small bridges over adjacent streets, the acquiring of additional lands, owned by private parties, needed for the purpose and the partial erection of the Union Depot building.

4th. Because of certain legal proceedings, affecting the issue and delivery of certain bonds voted by the City of Omaha, and of the fact that The Union Pacific Railway

Company passed into the hands of receivers, all work of construction ceased upon said building; and it now stands in unfinished and useless condition, the large sums of money spent thereon being practically wasted, unless the purpose of said contracting parties shall be carried out.

5th. If completed in substantial compliance with the proposed plans, it will afford ample convenience for the public and for the railroads that are located in the vicinity named.

6th. There are no obstacles, legal or otherwise, that cannot be overcome, and said project be carried to a successful result.

7th. A thorough investigation, lately made by three competent engineers, representing the Chicago, Rock Island & Pacific Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, Burlington & Quincy Railroad Company, has demonstrated the impracticability, from the engineering and operative standpoint, of the suggested Union Depot at 9th and Farnam Streets, for use by the three railroad companies named, on account of the combined grades and curves, the ruinous delay and danger in operating trains the grade crossings proposed, all set forth in detail in the reports of said engineers to their respective companies, in which the said proposed and contracted depot at 10th and Mason streets is declared to be the desirable one.

In view of these recited facts, the C. B. & Q. R. R. Co., declares it to be of great importance that work should be immediately resumed upon said depot, and hereby notifies you and each of you that it stands ready to proceed under the terms of said contract and pay any assessment that may be made upon it to bring about the speedy completion of said depot and its approaches and appurtenances.

We demand of the Omaha Union Depot Company that it proceed with its assessment of stock, and go on with all speed and with the purposes and objects of its creation; and of the Union Pacific Railway Company and its receivers, that it take such steps at law and otherwise as may enable it to comply with its contracts heretofore made in this behalf.

You are hereby notified that if, within thirty days

from the date hereof, no response, affirmative to the completion of said Union Depot and its appurtenances, is had by the C. B. & Q. R. R. Co., from you, it will take such steps as it may deem advisable for the protection of its rights in the premises under the said contracts, and looking to the erection of a Union Depot suitable for its own use and the use of such railroads as may desire to enter the same upon fair and equitable terms.

Reference is had to the following documents, for full information upon this subject matter:

A. Agreement of May 2nd, 1889, between the U. P. Ry. Co. and the C. B. & Q. R. R. Co.

B. Preliminary agreement of May 2nd, 1889, between same parties.

C. Agreement of April 1st, 1890, between the Omaha Union Depot Company and the U. P. Ry. Co., and the C., B. & Q. R. R. Co.

D. Deed of Alvin Saunders, trustee, to the U. P. Ry. Co., dated January 20th, 1872.

E. Decree of District Court of Douglas County, Nebraska, in case of *Stuht vs. the City of Omaha, et al.*, dated June 10th, 1893.

Signed this 21st day of July, 1896, by the President of the Chicago, Burlington & Quincy Railroad Company, acting on its behalf and for the Burlington and Missouri River Railroad in Nebraska, and of the Omaha and Southwestern Railroad Company, of which named roads it is the lessee and owner.

C. E. Perkins,
President of the Chicago, Burlington & Quincy Railroad Co.
Charles F. Manderson,
General Solicitor."

23. That on the 27th day of November, 1896, the said Burlington Company addressed another communication to the same officers and persons named above, viz., to Mr. S. H. H. Clark, President of The Union Pacific Railway Company, to the said Receivers of the Union Pacific Railway Company, and to the Omaha Union Depot Company, which was and is as follows:

"Gentlemen:

On July 21st, 1896, a letter was sent by the undersigned acting on behalf of the Chicago, Burlington and

Quincy Railroad Company, addressed as above, to each one named, calling attention to the urgent necessity for better depot and station facilities at Omaha. The present unfortunate and complicated conditions and the causes producing them were fully recited and need not be repeated. In said letter, this company declared its readiness to proceed under the terms of its contract with The Union Pacific Railway Company and the Omaha Union Depot Company, and pay any and all assessments needed for the carrying out of the agreement, and the completion of the Union Depot Building, now partly erected. It demanded of the Omaha Union Depot that it assess its stock and proceed to perform the duties devolving upon it under the terms of its incorporation.

No answer has been received to this communication, and we take the fact as evidence that there is no intention on your part to proceed to the completion of the half-built structure erected by moneys furnished in part by this company, and as a violation and recession of the contracts heretofore made and referred to in the letter of July 21st, 1896.

We now notify you that it is the intention of the Chicago, Burlington & Quincy Railroad Company to proceed with all possible speed to build a commodious and sufficient depot upon the ground owned by it in the vicinity of Tenth and Mason streets, Omaha, for its own use and for other railroads should they desire to join in the enterprise.

It will be necessary to clear the lots and lands owned by this company of all buildings, structures and tracks for the purpose named, and you are hereby notified to vacate and give possession of all the said property on or before the first day of March A. D. 1897.

The temporary building used by the Omaha Union Depot Company has been suffered to remain on our ground without lease and its removal on or before March 1st, 1897, is hereby demanded.

You are also notified that we will demand that the Omaha Union Depot Company shall proceed to terminate its corporate existence, and make accounting of its property and assets to this company, on a fair and equitable basis, and in default thereof this Company will proceed to

force its legal and equitable rights by such methods as may be advised.

Signed this 27th day of November A. D. 1897, by the esident of the Chicago, Burlington & Quincy Railroad ompany, acting on its behalf, and for the Burlington d Missouri River Railroad Company in Nebraska, and the Omaha and Southwestern Railroad Company, of hich named roads, it is lessee and owner.

C. E. Perkins,
President of the Chicago, Burlington
and Quincy Railroad Company.

harles F. Manderson,
General Solicitor."

24. That a consideration of the necessities of The Union Pacific Railway Company in respect of a provision or the creation at Omaha of proper and sufficient passenger facilities has been recently enforced upon the officers of the said Union Pacific Railway Company, and also upon the Receivers of the said Union Pacific Railway Company. That the plans and scheme for the erection of the said Omaha Union Depot Company's plant upon the ground hereinbefore mentioned have been found to be in actual application to the necessities of the public service at said place insufficient and undesirable; that the coming into said property of other railroads would immediately tax to the utmost the capacity of the said proposed Union Depot scheme for the proper transaction of the passenger business at said station that it would be extremely inconvenient to the public as well as to the railroads using said property, and that it has been found that some other arrangement for the proper carrying on of the passenger business at Omaha is necessary at said place.

That at conferences recently held between the officers of the said Burlington Company, the officers of The Union Pacific Railway Company, the Omaha Union Depot Company and the Receivers of the said Union Pacific Railway Company it has been found to be expedient and proper that the entire plan of constructing a Union Depot upon said tracts of ground set apart therefor as hereinbefore alleged should be entirely abandoned and that other facilities for the transaction of such business should be provided by the railway companies bound to provide the same.

25. That the officers of the Burlington Company, the Omaha Union Depot Company and the Receivers of The Union Pacific Railway Company, as well as the officers thereof, have subject to the approval of the court, agreed upon a plan for the disposition of the assets of the said Omaha Union Depot Company and for the settlement of its affairs upon substantially the following basis:

A. The Omaha Union Depot Company shall be dissolved,—all of the stockholders therein agreeing to such dissolution of said corporation.

B. The Omaha Union Depot Company shall surrender and cancel the agreement made between it as party of the first part, and The Union Pacific Railway Company, as party of the second part, The Chicago, Burlington & Quincy Railroad Company as party of the third part, bearing date April 1, 1890.

C. The said Burlington Company and Pacific Company shall each cancel and surrender the said preliminary agreement of May 2, 1890, and the said Memorandum of Agreement of May 2, 1890, hereinbefore mentioned.

D. That the settlement of the affairs of the Omaha Union Depot Company and the distribution of its assets shall be made by dividing the properties thereof and apportioning the expenses and expenditures of said Omaha Union Depot Company for the work by it heretofore done upon the basis approximately as follows:

D. As to the building, the total cost of which is approximately estimated at the sum of $194,599.58, the Burlington Company and the Pacific Company shall each be charged one-half thereof; that is to say, to each company the sum of $97,299.79.

E. As to the moneys expended on account of the viaduct, that The Union Pacific Railway Company shall bear three-fourths of the cost thereof, and the Burlington Company one-fourth of the cost thereof. The total cost of said viaduct is approximately stated to be the sum of $204,092.02, under which such division The Union Pacific Railway Company would stand charged with the sum of $153,069.01.

26. That the real estate acquired by the said Omaha Union Depot Company at a cost of $121,030.39, should be divided between the two companies upon the basis of cost thereof, and upon a new boundary line to be located and

greed upon as the properties of the said Union Pacific Railway Company and the said Burlington Company, so that all of the property which lies to the north side of said new boundary line shall be charged to The Union Pacific Railway Company at the cost and value of $71,547.22; and all of the said acquired property which lies to the south side of said new boundary line, shall be charged to the said Burlington Company at the cost and value of $49,483.17.

F. That the cost of the work done upon the 7th street approach as hereinbefore stated to be the sum of $17,221.65, shall be charged to the said Union Pacific Railway Company and become its property.

'The total amount and value of the property of the said Omaha Union Depot Company is thus found to be the sum of $536,943.64, of which there is by said proposed division allotted to the said Union Pacific Railway Company, to be paid for expenses and for property to be owned and held by it in full the sum of $339,137.67; and there is to be allotted to the said Burlington Company to be paid for expenses and for property to be owned and held by it in full the sum of $197,805.97, so that the value of the property and expenses thus allotted to The Union Pacific Railway Company is in excess of that value of property and expenses allotted to the said Burlington Company the sum of $141,331.70, whereby the said Union Pacific Railway Company would be required to pay for the use of the said Burlington Company one-half of the said difference, or the sum of $70,665.85.

27. There is, however, on hand in the treasury of the said Omaha Union Depot Company approximately the amount of $70,000. of net assets in money, which should be equally divided between the said Burlington Company and the Pacific Company, thus leaving to be paid by the said Pacific Company for the benefit of the said Burlington Company the net sum of approximately $35,665.85. The rule of division so agreed upon, subject to the approval of the court herein, being generally that the amount of items going into the cost of the Union Depot building or its appurtenances to be divided equally,—the material therein to be removed during the year 1897 and the proceeds thereof or the material itself to be equally divided. The 7th street approach work to be taken and paid for by

The Union Pacific Railway Company; the cost of the viaduct to be apportioned, three-fourths to The Union Pacific Railway Company and one-fourth to the said Burlington Company. The land acquired by the Omaha Union Depot Company to be divided on the basis of cost,—the boundary line to be worked out; any other general expenses not covered in the foregoing to be divided equally.

On examining the ground it was found that under the conditions now existing and which were brought about by the construction of the work done by the Omaha Union Depot Company by the building and maintenance of tracks and other facilities and in the re-establishment of the tracks of the respective companies, it would be advantageous and economical for both companies that a certain strip of ground, the title to which is vested in the Union Pacific Railway Company, extending eastward from about the east line of 10th street and varying from nothing to eight feet in width should be allotted to the said Burlington Company, and that west of the east line of 10th street, a certain strip of ground about equal in total area to the strip of ground lastly aforesaid. the title to which is vested in the Burlington Company, should be allotted to the said Union Pacific Railway Company.

28. That the value of the one tract is practically equal to the value of the other, and that the new boundary line thus established is not only fair and advantageous as between the two companies, but is the most economical one to adopt by reason of the difficulties and expense of construction and re-construction which would unavoidably follow in case the arbitrary lot lines and title holdings of the companies were to be followed as the established boundary line.

29. The Omaha Union Depot Company will by its officers pass the necessary resolutions and take the necessary corporate action to bring about a dissolution of its corporate existence to effectually release, cancel and surrender the said agreement made between it and the said Burlington and Pacific Companies, and to convey to the said Burlington Company and the said Pacific Company, respectively, the portions of lots and lands owned by it severally proposed to be allotted and set apart to the ownership and for the use of the said Burlington and Pacific

Companies respectively; but such action cannot be taken as petitioners are advised, by those members of the Board of Directors of said Omaha Union Depot Company acting for and representing the said Union Pacific Railway Company until the said Union Pacific Railway Company is itself authorized to adopt and carry out the above mentioned plan of settlement of the affairs of the said Omaha Union Depot Company.

30. The Omaha Union Depot Company has no bonded or floating indebtedness; it has no creditors, and there are no other persons interested in its affairs as stockholders or otherwise, save the Burlington Company and The Union Pacific Railway Company.

31. It is very greatly for the benefit, advantage and interest of The Union Pacific Railway Company that it shall be permitted to secure possession of all that part of its lands so as aforesaid set apart for the use of the said Omaha Union Depot Company; the value of the land itself independent of its value for use in connection with the remaining property of The Union Pacific Railway Company is very greatly in excess of any benefit which might or could result to The Union Pacific Railway Company by carrying out and conforming to the plan under which the said Omaha Union Depot was created. The value of said portion of its premises for use in connection with the remainder of the premises of The Union Pacific Railway Company in said vicinity consists, besides its intrinsic value for general purposes, in the great benefit and advantage which would and will accrue to The Union Pacific Railway Company in the transaction of its freight and passenger business from said property; the location of the entire tract at the west entry of the bridge of The Union Pacific Railway Company over the Missouri River and in the midst of the Union Pacific Railway Company's extensive yards for the handling of freight and passengers, make it all important to the said Union Pacific Railway Company that said premises should be secured to it for the transaction of its ordinary daily current handling of trains in and through the said yard, and would and will constitute a very great addition to the value and economy in the use of the terminal facilities of The Union Pacific Railway Company at Omaha.

32. It is very greatly to the benefit and advan
of The Union Pacific Railway Company and its prop
that in the division of ground owned by the Omaha U
Depot Company there should be alloted to the Union
cific Railway Company that portion which has been ag
upon at the value hereinbefore stated, and also that
strip of land on the west side of 10th street owned by
Burlington Company which falls to the north side of
new proposed boundary line between the properties of
Burlington and Pacific Companies, should be acquired
and held by The Union Pacific Railway Company,
thereby it is practicable in laying out and construct
the tracks to be laid upon said premises to utilize with
least possible expense all of the ground thus secured fo
which is or will be owned by the said Union Pacific R
way Company.

33. Special advantages in this respect occur
reason of the location of the said two strips of grou
and the possession of permanent improvements and
tain viaducts which cross said properties at 10th and 1
streets, and because of the peculiar character of the grou
and yards of The Union Pacific Railway Company n
said point.

34. A map or plat showing the locations herein
fore mentioned and the outlines of the grounds of T
Union Pacific Railway Company set apart for the use
the said Omaha Union Depot Company; the grounds
be acquired by The Union Pacific Railway Company fr
said Omaha Union Depot Company; and the small st
of ground to be acquired from the Burlington Compa
as well as the small strip of ground to be acquired by t
Burlington Company from The Union Pacific Railw
Company, will be shown and exhibited on the hearin
together with such showing as may be made in respect
the railroad tracks owned and operated, constructed or
be constructed over and across said premises.

35. The mortgages of The Union Pacific Railw
Company or its predecessor, the Union Pacific Railro
Company, which may affect the properties in question a
the following:

1st. The Union Pacific Railroad Company's Fi
Mortgage, dated February 1, 1865, of which F. Gord
Dexter and Oliver Ames, 2nd, are trustees.

2nd. The Union Pacific Railroad Company's Sinking Fund Mortgage, dated December 18, 1873, of which the Union Trust Company of New York is trustee.

3rd. The Union Pacific Railroad Company's Bridge 8 per cent Mortgage, dated April 1, 1871, of which J. Pierpont Morgan and Edwin F. Atkins are trustees.

4th. The Union Pacific Railway Company's Omaha Bridge Renewal Mortgage, dated October 1, 1885, of which the Central Trust Company of New York is trustee.

WHEREFORE, upon the facts hereinbefore recited it is prayed that The Union Pacific Railway Company, the trustees aforesaid, F. Gordon Dexter and Oliver Ames, 2nd; The Union Trust Company of New York; J. Pierpont Morgan and Edwin F. Atkins; and the Central Trust Company of New York, each be notified of the filing of this petition and that they and each of them be required within a short day to be fixed by the court to make answer thereto (but not under oath) and that upon the final hearing hereof it may be ordered, adjudged and decreed that The Union Pacific Railway Company notwithstanding the Receivership herein, may be authorized and empowered to take any steps necessary to consent to the securing of the dissolution of the corporation known as the Omaha Union Depot Company and that an order may be made herein authorizing and permitting the said Union Pacific Railway Company as one of the stockholders of said Omaha Union Depot Company to consent to a plan for the distribution of the assets and allotment of the charges and expenditures of the said Omaha Union Depot Company between itself and the other stockholders thereof, and that the hereinbefore mentioned plan of such division of assets and distribution of charges and expenses may be ratified, approved and confirmed; that said Union Pacific Railway Company be authorized and empowered to arrange for the cancellation and surrender of all of the said several contracts hereinbefore mentioned which in any way affect any part of its said property at Omaha, Nebraska; that said Union Pacific Railway Company be authorized and empowered to take the title to that portion of the real estate of the Omaha Union Depot Company allotted to it, and also to that certain strip of ground owned by the Burlington

Company which lies to the north of the new proposed boundary line between the properties of the said Burlington Company and the said Union Pacific Railway Company and that said Union Pacific Railway Company, notwithstanding the receivership herein, may be authorized and empowered to convey to the said Burlington Company the said strip of ground lying south of the proposed new boundary line between the properties of the said Burlington Company and said Pacific Company, and that said Union Pacific Railway Company may be authorized and empowered to establish said new boundary line between its properties and the properties of the said Burlington Company as in this petition has been indicated and described. That the Receivers herein be authorized and empowered to do any act or thing necessary to carry out and conclude any of the said several matters hereinbefore referred to and that they be given full power and authority to do any act or thing necessary in that behalf and that out of the proper funds of the Union Pacific Railway Company now remaining in the custody and possession of the said receivers, either as Receivers in said Ames cause as hereinbefore mentioned, or as Receivers in said Dexter cause as hereinbefore mentioned, to pay the said sum of money approximating the sum of $36,000, more or less, necessary under said proposed plan of settlement to be paid for or on behalf of the said Union Pacific Railway Company, and that upon final consideration hereof full power and authority may be granted and given to the said railway company and to said Receivers, or either or both of them, to do and perform any act or thing necessary to the carrying out and completion of the said settlement, and for such other and further order and direction in the premises as shall seem meet.

The Union Pacific Railway Co.,
February 12, 1897. By W. J. Carroll,

Endorsed: Filed Jun 7, 1897, Its Solicitor.
Oscar B. Hillis, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

Oliver Ames, 2nd, et al., Complainants,
vs
The Union Pacific Railway Co., et al., Defendants.

F. Gordon Dexter et al., Trustees, Complainants.
vs
The Union Pacific Railway Co., et al., Defendants.

ACCEPTANCE OF SERVICE AND CONSENT *in re* Petition of The Union Pacific Railway Co., praying for orders and directions in respect to perfecting title to depot grounds and terminal facilities at Omaha, Nebraska.

Due service of a copy of the petition of The Union Pacific Railway Company, dated February 12, 1897, praying for order and direction in respect of perfecting title to depot grounds and terminal facilities at Onaha, Nebraska, IS HEREBY ACCEPTED AND EACH OF THE uncersigned enters VOLUNTARY APPEARANCE to said proceeding; and CONSENTS that said petition may without any order of reference stand referred to the Hon. Wm. D. Cornish Special Master in the above entitled causes, and that an immediate hearing may be had thereon before said Master at the office of the Receivers of the Union Pacific system, in the City of New York, without further notice to us, and that said Master may investigate, determine and report upon said matters according to the rules and practice of the Court, in the same manner and with the same effect as if an order of reference had been made upon said petition.

Oliver Ames, 2nd, et al, complainants, vs. the Union Pacific Railway Co., et al., defendants,

By N. S. Harwood & Jno. H. Ames,
Their Solicitors.

F. Gordon Dexter et al., Trustees, Complainants,

By Winslow S. Pierce,
Their Solicitor.

Morgan & Atkins, Trustees, of the Union Pacific Railway Co's Bridge Mortgage;

By Seward, Guthrie, Morawitz & Steele,
Their Solicitors.

Central Trust Company, Trustee of the Union Pacific Railway Co's Bridge Renewal Mortmage,

By Butler, Notman, Joline & Mynderse,
Its Solicitors.

Union Trust Company, Trustee of the Union Pacific Railroad Co's Sinking Fund mortgage,

By Wheeler H. Peckham,
Its Counsel.

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, Receivers of The Union Pacific Railway Company,

By W. R. Kelly,
Their Solicitor.

The Union Pacific Railway Co., Petitioner,

By W. J. Carroll,
Its Solicitor.

Endorsed:—Filed Jun 7, 1897,
Oscar B. Hillis, Clerk.

AFFIDAVIT OF SERVICE.

Of Copy of Proposed Report of Special Master and Notice to File Exceptions Thereto, *in re* Omaha Union Depot Grounds.

Ames-Dexter Master's No. Ames 221.

State of Nebraska, }
County of Douglas, } ss

H. B. Taylor, being first duly sworn, deposes and says, that on March 13, 1897, he mailed by United States mail, postage fully prepaid, a copy of the notice and report of Special Master hereto attached, to each of the following named parties:

Messrs. Harwood & Ames, Solicitors for Oliver Ames, Second, et al., Complainants, Omaha.

Mr. Winslow S. Pierce, Solicitor for Dexter, et al., Trustees, Complainants, 195 Broadway, New York.

Messrs. J. Pierpont Morgan & Edwin F. Atkins, Trustee, 3 Broad St., New York.

Messrs. Butler, Notman, Joline & Mynderse, Solicitors for Central Trust Company, Trustee, 54 Wall St., New York.

Mr. Wheeler H. Peckham, Solicitor for Union Trust Co., Trustee, 80 Broadway, New York.

Mr. W. R. Kelly, Solicitor for the Receivers herein, 27 William St., New York.

Mr. W. J. Carroll, Solicitor for the Union Pacific Railway Company, Omaha, Neb.

Hon. J. C. Cowin, of Counsel for the United States, Omaha, Nebraska.

H. B. Taylor.

Subscribed and sworn to before me this 27th day of March, 1897.

E. L. Sayre,
Notary Public.

[SEAL]

My commission expires June 24, 1902.

The foregoing is a true copy of the original which is attached to this report filed in Ames case in Nebraska.

W. D. Cornish,
Special Master.

Endorsed: Filed Jun. 7, 1897.
Oscar B. Hillis, Clerk.

IN THE CIRCUIT COURT OF UNITED STATES FOR THE DISTRICT OF NEBRASKA.

Oliver Ames, Second, et al.,
Complainants,
vs.
The Union Pacific Ry. Co., et al.,
Defendants.

F. Gordon Dexter and Oliver Ames, Trustees,
Complainants,
vs.
The Union Pacific Ry. Co., et al.,
Defendants.

REPORT OF SPECIAL MASTER upon Petition of the Union Pacific Railway Company *in re* Omaha Union Depot Grounds.

To the Honorable, the Circuit Court:

I respectfully report upon the petition of the Union Pacific Railway Company praying for instructions as to dissolution and divisions of grounds and property of the Omaha Union Depot Company that said petition was filed with me on February 23rd, 1897, together with acceptance of service of a copy of said petition, and consent to hearing on same before me as special master forthwith and without further notice, on behalf of

Oliver Ames, Second, et al., Complainants.

F. Gordon Dexter and Oliver Ames, trustees, Complainants,

J. Pierpoint Morgan and Edwin F. Atkins, trustees Omaha Bridge Mortgage,

Central Trust Company, Trustee Omaha Bridge Renewal Mortgage,

Union Trust Company, Trustee Union Pacific Railway Company's Sinking Fund Mortgage.

The Receivers herein, and The Union Pacific Railway Company.

That no answers were interposed to said petition:

That thereupon I proceeded to hear said petition at my office in the City of New York on said February 23rd, 1897, there appearing upon such hearing the parties enumerated above, by their respective solicitors, and that no objections were made to the granting of the prayer of said petitioners.

And now, having considered the pleadings and the evidence, herein, I find and report the facts to be as follows:

FIRST.

That the allegations contained in said petition are true as therein stated, except as hereinafter found.

SECOND.

That upon the payment by the Union Pacific Railway Company of the sum of seventy-five hundred dollars upon its subscription to the capital stock of the Omaha Union Depot Company, as stated in paragraph nine of said petition, said Omaha Union Depot Company issued to said Union Pacific Railway Company its certificate of stock for seventy-

five thousand dollars, ten per cent paid in, and that thereafter said Union Pacific Railway Company pledged its said stock in said Omaha Union Depot Company and delivered said certificate of said stock to Drexel, Morgan & Company, now J. P. Morgan & Company, as trustees under the trust indenture of said Union Pacific Railway Company to said trustees, dated September 4, 1891, and that said J. P. Morgan & Company as trustees under said trust indenture have ever since held and now hold said stock and said certificate therefor under the terms of said trust indenture.

THIRD.

That said J. P. Morgan & Company as such trustees, have offered to sell said stock and said stock certificate to said Union Pacific Railway Company, and release the same from said pledge under said trust indenture in consideration of the payment to them as such trustees, of the sum of seventy-five hundred dollars, and that it is necessary to enable said Union Pacific Railway Company to carry out the proposed settlement of the affairs of said Omaha Union Depot Company, that said stock should be owned by said Union Pacific Railway Company free from said pledge under said trust indenture.

As CONCLUSIONS I respectfully report and recommend that orders be made herein granting the prayer of said petition, and

First, Authorizing said Union Pacific Railway Company to purchase of said J. P. Morgan & Company as trustees under said trust indenture of September 4, 1891, said stock and the certificate therefor, issued by said Omaha Union Depot Company to said Union Pacific Railway Company, in the amount of seventy-five thousand dollars, ten per cent paid in, and to secure the release to said Union Pacific Railway Company of said stock from the lien of said trust indenture, and that the Receivers of the Union Pacific Railway Company appointed in the Ames cause herein entitled be authorized and directed to act for said Union Pacific Railway Company in that behalf, and to pay to said J. P. Morgan & Company, as such trustees, the amount necessary to secure said stock to said Union Pacific Railway Company free from said trust, not exceeding the sum of seventy-five hundred dollars, out of the moneys in their hands derived from the prop-

erty of said railway company in said Ames cause, and to charge the payment so made in their accounts as Receivers in said Ames cause.

Second, Authorizing the Union Pacific Railway Company, notwithstanding the receiverships herein and the Receivers herein, so far as any action by them may be requisite, to enter upon and carry out the settlement of the affairs of the Omaha Union Depot Company and the division and distribution of its property in accordance with and in pursuance of the terms of the plan of settlement and distribution reported and recommended by the petitioner herein in its said petition, and to enter into and perform such contracts with said Omaha Union Depot Company and with the Burlington Company mentioned in said petition, as may be necessary to the complete performance of said plan of settlement with said Depot Company or said Burlington Company, and that to such end said Union Pacific Railway Company and said Receivers thereof be authorized to make such conveyances, releases and acquittals as may be necessary to be made by or in behalf of said Union Pacific Railway Company in performance of said agreement and plan of settlement, and to receive for said Union Pacific Railway Company all conveyances, releases and acquittances to which said Union Pacific Railway Company shall be on its part entitled in the performance of such agreement, and authorizing said Union Pacific Railway Company to receive and hold as part of its railway property all real property to be conveyed to it under such agreement, and to consent to the dissolution of said Depot Company, and to finally surrender its said stock and stock certificate therein for cancellation.

Third, Authorizing the Receivers herein as Receivers of the Union Pacific Railway Company in said Ames cause, to pay such sums as may be required to be paid by said Union Pacific Railway Company in the performance of such agreement, and to charge the sum so paid in their accounts as such Receivers in said Ames cause.

Fourth, Authorizing said Union Pacific Railway Company and said Receivers thereof, in case any of the particular portions or details of such plan of settlement shall be found to be impracticable or impossible of performance, to consent to and carry out such modifications thereof as

may be by them deemed best, but which shall not materially increase the burden or obligations of the Union Pacific Railway Company, and especially, that in case it shall be found that either said Union Pacific Railway Company or said Burlington Company shall be unable to convey by clear or unincumbered title such or any of the lands which said plan of settlement provides shall be conveyed by said company, then said Union Pacific Railway Company and its Receivers be authorized to enter into such contracts, leases, or conveyances as shall be necessary to, and shall most nearly conform to and carry out said plan of settlement.

Respectfully submitted,
Wm. D. Cornish,
Special Master.

Omaha, April 2, 1897.

Endorsed: Filed Jun 7, 1897,
Oscar B. Hillis, Clerk.

CIRCUIT COURT OF THE UNITED STATES FOR THE EIGHTH JUDICIAL CIRCUIT, DISTRICT OF NEBRASKA.

Oliver Ames, Second and Samuel Carr, Executors of the Last Will and Testament of Frederick L. Ames, deceased, and Edwin F. Atkins and Peter B. Wyckoff,
Complainants,

vs.

The Union Pacific Railway Company; The Atchison, Colorado and Pacific Railroad Company; The Atchison, Jewell County and Western Railroad Company; The Boise City Railway and Terminal Company; The Boulder Valley and Central City Wagon Road Company; The Bozeman Coal Company; The Callaway Improvement Company; The Carbon Cut-Off Railway Company; The Cascade Railroad Company; The Central Branch Union Pacific Railroad Company; The Columbia and Palouse Railroad Company; The Denver, Leadville and Gunnison Railway Company; The Echo and Park City Railway Company; The Green River Water Works

Company; The Junction City and Fort Kearney Railway Company; The Kansas Central Railroad Company; The Kansas City and Omaha Railroad Company; The Kearney and Black Hills Railway Company; The Laramie, North Park and Pacific Railroad and Telegraph Company; The Lawrence and Emporia Railway Company; The Loveland Pass Mining and Railroad Tunnel Company; The Mill Creek Flume and Manufacturing Company; The Montana Railway Company; The Morrison Stone, Lime and Town Company; The Omaha and Republican Valley Railway Company; The Oregon Railway and Navigation Company; The Oregon Short Line and Utah Northern Railway Company; The Oregon Railway Extensions Company; The Rattlesnake Creek Water Company; The St. Joseph and Grand Island Railroad Company; The Salina and Southwestern Railway Company; The Solomon Railroad Company; The Union Land Company; The Union Pacific, Denver and Gulf Railway Company; The Union Pacific, Lincoln and Colorado Railway Company; The Union Pacific Coal Company; The Walla Walla and Columbia River Railroad Company; The Washington and Idaho Railroad Company; The Wood River Improvement Company; The American Loan and Trust Company,

Defendants.

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F. Gordon Dexter and Oliver Ames, Trustees,
Complainants,

vs

The Union Pacific Railway Company, et al.,
Defendants.

And now this cause coming on to be heard upon the report of the Special Master upon the petition of the Union Pacific Railway Company *in re* the Omaha Union Depot grounds, and it appearing to the Court here that the said

tion of the Union Pacific Railway Company, praying instructions as to the dissolution and division of the nds and property of the Omaha Union Depot Com- y, filed February 23rd, 1897, together with the accept- es of service of copies of said petition, entry of appear- e of the several parties thereto and consent to an im- liate hearing thereon without further notice on behalf he several parties therein specified, and that no an- rs have been interposed to said petition and that, pursu- to the said consents, a hearing had been had thereon in City of New York, on the 23rd day of February, 1897, which there appeared the Union Pacific Railway Com- ny, the Receivers herein, the complainants herein, J. P. rgan and Edwin F. Atkins, trustees of the Omaha idge Mortgage, the Central Trust Company, trustee of e Omaha Bridge Renewal mortgage, the Union Trust mpany of New York, trustee of the Union Pacific Rail- ay Company Sinking Fund Mortgage, by their respective licitors, and that no objection was made at such hearing the granting of the prayer of said petition, and it fur- er appearing that the said Master had prepared and rved upon each of said several parties a draft of his re- ort upon such petition and the requirement that each of id parties should file exceptions thereto, if any they had, the office of the said Master at Omaha, Nebraska, on or efore April 1st, 1897, and it further appearing that no xceptions had been had or taken to said report, it is by he Court here, on motion of the said petitioner by its so- icitor,

ORDERED, ADJUDGED AND DECREED that said Master's eport be filed and that the said Master's report be and the ame is hereby in all things ratified, approved and con- firmed, except as to that portion thereof recommending that the payments of money therein specified be charged to the funds remaining in the hands of the said Receivers in said Ames cause; and the propriety of making the charge of said payments against the funds in the hands of said Receivers in said Ames cause in this proceeding being questioned, the trustees Dexter and Ames, above named, complainants, by their solicitors Winslow S. Pierce and E. P. Sanborn, in open Court, consent to the charge of said moneys against the funds in the possession of the Re-

ceivers in said Dexter cause, and file their motion herein as follows:

(Title omitted)

"The complainants in said Dexter cause above entitled pray that orders be entered herein approving the report of the Special Master herein upon the petition of The Union Pacific Railway Company praying for instructions as to the dissolution and division of grounds and property of the Omaha Union Depot Company, which report is dated April 2, 1897, except that inasmuch as some question is made as to the propriety of charging the payments of money recommended to be made in said report out of the funds in the hands of the Receivers in said Ames cause these complainants CONSENT and PRAY that the orders confirming said report provide that the moneys to be paid thereunder and in carrying the provisions of the same into effect be paid by the Receivers in said Dexter cause and charged in their accounts instead of by said Receivers in said Ames cause as in said report recommended.

F. Gordon Dexter and Oliver Ames, Trustees
of the first mortgage of the Union Pacific
Railroad Company.

By Winslow S. Pierce and E. P. Sanborn,
Their Solicitors."

Dated June 5th, 1897.

It is further ORDERED, ADJUDGED and DECREED, that the said Union Pacific Railway Company be and it is hereby authorized to purchase of the said J. P. Morgan & Co., trustees under said Indenture of September 4th, 1891, the stock and the certificates therefor issued by the said Omaha Union Depot Company to the said Union Pacific Railway Company in the amount of $75,000, ten per cent paid in and to secure the release to the said Union Pacific Railway Company to said stock from the lien of the said trust indenture, and that the Receivers of the Union Pacific Railway Company appointed in the causes herein entitled, be and they are hereby authorized and directed to act for said Union Pacific Railway Company in that behalf and to pay to the said J. P. Morgan & Co., trustees as aforesaid, the amount necessary to secure said stock to said Union Pacific Railway Company free from the lien of said trust, not exceeding the sum of $7,500, out of the moneys in their hands derived from

he operation of such railway company in said Dexer cause and to charge the payment so made in their accounts as Receivers in said Dexter cause. It is further

ORDERED, ADJUDGED and DECREED that the said Union Pacific Railway Company be and it is hereby authorized, notwithstanding the receivership herein, and the Receivers herein are also authorized, so far as any action by them may be requisite to enter upon and carry out the settlement of the affairs of the said Omaha Union Depot Company and the division and distribution of its property in accordance with and in pursuance of the terms of the plan of settlement and distribution reported and recommended by the petitioner herein in its said petition and to enter into and perform such contracts with said Omaha Union Depot Company and with the Burlington Company, mentioned in said petition as may be necessary to the complete performance of said plan of settlement with said Depot Company or said Burlington Company and that to such end said Union Pacific Railway Company and the said Receivers thereof be and they are hereby authorized to make such conveyance, release and acquittal as may be necessary to be made by it in performance of said agreement and plan of settlement and to receive for said Union Pacific Railway Company all conveyances, releases, and acquitances to which said Union Pacific Railway Company shall be, on its part, entitled in the performance of said agreement.

The said Union Pacific Railway Company is hereby authorized to receive and hold as a part of its railroad property all real property conveyed, or to be conveyed to it under such agreement and to consent to the dissolution of such Union Depot Company of Omaha and to finally surrender its stock and stock certificates thereon for cancellation. It is further

ORDERED, ADJUDGED AND DECREED that the Receivers herein, as receivers of the Union Pacific Railway Company in said Dexter cause be and they are hereby authorized to pay such sums as may be required to be paid by such Union Pacific Railway Company in the performance of said agreement and to charge the sums so paid in their accounts as such Receivers in said Dexter cause.

FOURTH. It is further ORDERED, ADJUDGED AND

DECREED that the said Union Pacific Railway Company and the said Receivers thereof be and they are hereby authorized and empowered in case any of the particular provisions and details of such plan of agreement and settlement shall be found to be impracticable or impossible of performance to consent to and carry out such modifications thereof as may be deemed best but which shall not materially increase the burden or obligations of the Union Pacific Railway Company, and especially that in case it shall be found that either the said Union Pacific Railway Company or the said Burlington Company shall be unable to convey by clear or unincumbered title such or any of the lands which said plan of settlement proposes shall be conveyed by said company, then said Union Pacific Railway Company and its Receivers be and are hereby authorized to enter into such contracts, leases or conveyances as shall be necessary and shall most nearly conform to and carry out said plan of settlement.

FIFTH. That all real property taken to the Union Pacific Railway Company under the authority hereof shall be held by it under and subject to the liens of the mortgage of complainants Dexter and Ames.

Walter H. Sanborn,
Circuit Judge.

Dated St. Paul, June 5, 1897.

Petition of Receivers for authority to enter into contract with the Omaha Bridge & Terminal Railway Company.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EIGHTH JUDICIAL CIRCUIT, DISTRICT OF NEBRASKA.

48–R

F. Gordon Dexter and Oliver Ames, Second, Trustees,

Complainants.

vs.

The Union Pacific Railway Company, The United States of America, The Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, Trustees, The Central Trust Company of New York, Trustee, The

Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Chicago & Northwestern Railway Company, The Omaha & Republican Valley Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, The Kearney & Black Hills Railway Company, Frank H. Peavy, E. C. Michener and Charles T. Peavy, co-partners under the firm name and style of F. H. Peavy & Company, The Union Pacific, Denver & Gulf Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Salina & Southwestern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Kansas & Nebraska Railway Company, The Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane,

Defendants.

To the Honorable, the Judges of the Circuit Court of the United States in and for the District Aforesaid:

Your petitioners, the Receivers herein, now come and respectfully show to the Court that the Omaha Bridge & Terminal Railway Company, a corporation of the State of Nebraska, is authorized and proposes to construct, maintain and operate at Omaha, in said state, a passenger station for the use of the various railroads terminating at or running into said city, said union passenger station or depot to be completed with tracks, interlocking appliances, approaches, and terminal facilities necessary and proper for the conduct of a union passenger station and for the business of the various railway companies centering therein at Omaha as aforesaid.

Your petitioners further respectfully show to the Court that The Union Pacific Railway Company, defendant herein, owns a large tract of right of way, station and depot grounds in said city, upon which from time to time said Union Pacific Railway Company has itself, or through a depot company organized for that purpose, endeavored to construct or cause the construction of a suitable passenger station necessary for the business of said railway company at Omaha, Nebraska, but that all such endeavors, extending over a long term of years have failed, owing to clouds upon the title to the said real property and to irreconcilable difference existing between said railway company and the said City of Omaha. And your petitioners say that as the result of said difference and the inability of the said Union Pacific Railway Company to construct or cause the construction of a suitable passenger station at Omaha, Nebraska, the temporary passenger depot now established and occupied by the said railway company at Omaha is entirely insufficient and inadequate for the proper conduct, handling and management of the passenger business of the said Union Pacific Railway Company and your Receivers operating the same, at Omaha as aforesaid.

Your petitioners further respectfully show to the Court that in consideration of certain rentals and other considerations the said Omaha Bridge & Terminal Railway Company is willing to grant to the said Union Pacific Railway Company and the Receivers thereof, for the term of fifty (50) years, the right to use and occupy said union passenger depot and appurtenances when the same shall have been completed, in common with such other companies as may acquire the right to use the same, and to that end a memorandum of agreement between the said Omaha Bridge & Terminal Railway Company as party of the first part and The Union Pacific Railway Company and your petitioners, Receivers of said company, as parties of the second part, has been prepared, providing for the construction, maintenance and operation by said Omaha Bridge & Terminal Railway Company of a union passenger station as aforesaid, and the leasing of a union passenger station as aforesaid, and the leasing and granting to your petitioners and said The Union Pacific Railway Company of the right to use said passenger station, tracks and facilities upon the terms, conditions, covenants and

for the considerations in said memorandum of agreement contained, a copy of which said proposed agreement is on file in the office of the Special Master in Chancery appointed in this cause.

Your petitioners further show that said Omaha Bridge & Terminal Railway Company in and about the construction, maintenance and operation of the union passenger station as aforesaid, will require a large amount of real estate, right of way and track facilities which are now owned by the Union Pacific Railway Company and as a result of negotiations between your Receivers and the said Omaha Bridge & Terminal Railway Company, a draft of contract has been prepared whereby certain tracts of real estate situate in the City of Omaha, Douglas County, Nebraska, now owned by The Union Pacific Railway Company are to be sold and conveyed to the said Omaha Bridge & Terminal Railway Company, and certain track privileges of the Union Pacific Railway Company are to be leased to the said Omaha Bridge & Terminal Railway Company, and in said proposed contract the terms, regulations, restrictions, conditions and all necessary covenants to fully protect and guard the interests and rights of The Union Pacific Railway Company, its properties, railway lines and terminal facilities, are fully specified and set forth, and your petitioners represent that, if they are to be authorized and empowered to enter into and execute the first contract and agreement hereinbefore referred to it will also be necessary to execute and perform the contract and agreement in this paragraph referred to.

Your petitioners respectfully show that a true copy of the proposed agreement referred to in this paragraph is on file with the said Master, together with a copy of the first contract hereinbefore in this petition referred to.

Your petitioners further respectfully show to the Court that the said agreements have been examined by and bear the approval as to legal sufficiency of the general solicitor for your Receivers; and your petitioners believe and so represent the fact to be that it is for the best interest of the said Union Pacific Railway Company and of your Receivers, and also of all parties interested in said The Union Pacific Railway Company, and that it is necessary for the safe, effective and proper handling of the passenger business of said The Union Pacific Railway

Company at the city of Omaha, Nebraska, that the said agreements should be entered into by your Receivers on behalf of said The Union Pacific Railway Company.

Your petitioners further respectfully show to the Court that the said Omaha Bridge & Terminal Railway Company desires for its own protection in the construction of said depot and the heavy expense necessary in connection therewith, that the said agreement, if entered into, shall be binding and effective upon the parties thereto and especially The Union Pacific Railway Company, its successors and assigns, and the successors of your Receivers, petitioners herein.

WHEREFORE and in view of the recommendations aforesaid and the manifest benefits and advantages to be gained and enjoyed by the said Union Pacific Railway Company and its successors engaged in the transportation of passengers by railway into and out of the said City of Omaha, Nebraska, your petitioners pray that an order may be entered herein authorizing and empowering The Union Pacific Railway Company, notwithstanding the Receivership herein; and your petitioners as Receivers of said railway company, to enter into said proposed agreements with the Omaha Bridge & Terminal Railway Company, providing for the construction at Omaha, Nebraska, of a union passenger station and the leasing of said union passenger station and appurtenances as in said contract specified to said Union Pacific Railway Company and its successors for the full term of fifty (50) years upon the terms, conditions, and for the rentals, covenants and stipulations in said contracts contained and set out, and that upon the making, execution and delivery thereof by the said Union Pacific Railway Company and your petitioners, that the said contracts shall be binding upon the said Union Pacific Railway Company and your petitioners, the Receivers of said company, and also upon the successors of said railway company either at foreclosure sale or otherwise, and any Receiver or Receivers who may succeed your petitioners as Receivers of said railway company.

The Receivers aforesaid,
By Jno. M. Thurston,
Their General Solicitor.

Filed August 6, 1895.

Journal "U." Page 22.

In the Circuit Court of the United States for the Eighth Judicial Circuit, District of Nebraska.

48–R

F. Gordon Dexter and Oliver Ames, Second, Trustee,

Complainants,

vs

The Union Pacific Railway Company, The United States of America, The Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, Trustees, The Central Trust Company of New York, Trustee, The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The Union Pacific Lincoln & Colorado Railway Company, The Chicago & Northwestern Railway Company, The Omaha & Republican Valley Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, The Kearney & Black Hills Railway Company, Frank H. Peavy, E. C. Michener and Charles T. Peavy, co-partners under the firm name and style of F. H. Peavy & Company, The Union Pacific, Denver & Gulf Railway Company, The Salina & Southwestern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Kansas & Nebraska Railway Company, The Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert and John W. Doane The Chicago, Milwaukee & St. Paul Railway Company,

Defendants.

ORDER. No. 20.

Upon filing and reading the petition of the Receivers herein, and the Court being fully advised in the premises, it is

ORDERED, that the said petition be and the same is hereby referred to the Special Master in this cause for investigation and report. That a copy of said petition, of the proposed contracts referred to therein and of this order be forthwith served upon each of the following parties, viz:

The Union Pacific Railway Company, defendant herein.

The Omaha Union Depot Company.

The Chicago, Rock Island & Pacific Railway Company.

The Chicago, Milwaukee & St. Paul Railway Company.

The Chicago, Burligton & Quincy Railroad Company.

The City of Omaha.

The County of Douglas.

The Chicago & North Western Railway Company.

The Attorney General of the United States.

F. Gordon Dexter and Oliver Ames, Second, Trustees, complainants in this cause.

J. Pierpont Morgan and Edwin F. Atkins, Trustees, and The Union Trust Company of New York, Trustee.

It is further ordered, that each of said parties have until the 5th day of September, 1895, within which to appear and file answer to the said petition, showing cause, if any, why the prayer of said petition should not be granted; and that the said Receivers have ten days thereafter to reply, and that the said Special Master shall file his report thereon with due speed.

Walter H. Sanborn,
Circuit Judge.

Dated August 6, 1895.

Entered August 6, 1895, Journal "U," Page 22.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

Oliver Ames, Second, et al., Complainants,
vs.
Union Pacific Railway Co., et al., Defendants.

F. Gordon Dexter, et al., Complainants,
vs.
Union Pacific Railway Co., et al., Defendants.

ANSWER

Of Chicago, Burlington & Quincy Railroad Company.

Comes now the Chicago, Burlington & Quincy Railroad Company, and by way of response to the order of the Honorable Court made and entered in said cause heretofore, on to-wit, August 6, 1895, requiring it to show cause, if any it has, why the petition of the Receivers of The Union Pacific Railway Company, in that behalf exhibited, for authority to enter into the certain contract referred to in and by their said petition should not be granted, respectfully shows and represents, to this Honorable Court as hereinafter set forth. This respondent now and at all times hereafter saving and reserving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the manifold errors, uncertainties and imperfections in the said petition contained, for answer thereto, or to so much thereof as this respondent is advised is necessary or material for it to answer to, and for the purpose of advising and aiding the Honorable Court in the premises, says:

1. That it is a stranger to all and singular the matters and things in the said Receivers' petition contained, as well as to the basis of the recommendations therein specified, save and excepting as it is advised by the said petition and the specifications therein referred to, and therefore leaves the said Receivers to make due and legal proof in that behalf.

2. This respondent further answering says: It is a corporation created and existing pursuant to the laws of

the State of Illinois, and as such now is and for many years last past and prior to the happening of the events hereinafter referred to, has been engaged in the ownership and operation of a vast system of railroads for the carrying on of the business of a common carrier, having its initial eastern point at Chicago, Illinois, and from thence branching out, penetrating and traversing the States of Illinois, Iowa, Missouri, Kansas, Nebraska, Minnesota, South Dakota, Wyoming, Montana and Colorado, and having a total mileage, approximately 8,000 miles. That among others, this respondent owns and operates a line of railroad from Chicago, Illinois, to Denver, Colorado, via Omaha, Nebraska, and likewise a line from said last named city southeasterly through the States of Iowa and Missouri, to the Cities of St. Joseph, Kansas City and St. Louis, in said last named state; and owns and operates other lines to the west and northwest, all of which pass into and out of the City of Omaha, over which are daily and hourly moved passenger and freight trains which arrive at and depart from said city carrying to and from it a large number of passengers and tons of freight, demanding proper depot facilities and conveniences.

3. That for many years prior to 1889, this respondent, and also the Union Pacific Railway Company, owned and maintained its separate passenger depot in the City of Omaha, they having been located near the present temporary structure used for depot purposes by several railroads, including this respondent and The Union Pacific Railway, which jointly maintain the same. That in the year 1889, owing to the unprecedented increase in the population of the City of Omaha and its rapid development as a city and consequent augmentation of traffic, both passenger and freight, this respondent, as well as The Union Pacific Railway Company, realizing that their respective depots had outgrown their usefulness, affording no longer the facilities due to and demanded by the railroad traveling public and those having business to transact with it, conceived the plan of building a large, modern passenger depot on the lands owned or controlled by each in said city and when completed to extend the use of the same to all other railroads which might desire to do so upon terms of equality.

Thereupon pursuant to such plan, and for the purpose of realizing their desires, said corporations, to-wit; The Union Pacific Railway Company and this respondent, each represented by its principal local administrative officers, met in the City of Omaha on the 2nd day of May, 1889, for the purpose of discussing and formulating plans. That meeting resulted in the execution of an agreement in writing, bearing date the said day, under their respective corporate seals. By the terms of said agreement, said corporations, in consideration of the mutual covenants and conditions therein expressed to be by each kept and performed, became obligated thereby to unite in the construction and erection of a union passenger station within the City of Omaha, and for that purpose to take steps to cause to be incorporated, a company, for the building of such depot. A copy of said agreement is hereto attached, marked Exhibit "A" and by way of reference made a part hereof.

That on the same day, to-wit: May 2nd, 1889, the said Union Pacific Railway Company, and this respondent, in furtherance of the objects expressed in the agreement aforesaid, and in compliance with its provisions, entered into a second agreement, supplemental to that above referred to, likewise under their respective corporate seals, by the terms whereof each agreed to convey to the proposed Depot Company whose incorporation was arranged and provided for, by deed or lease, certain lands by each owned or controlled, contiguous to or adjoining each other upon the proposed site near Tenth and Marcy Street in the City of Omaha; and otherwise defining and fixing their contract rights, duties and obligations in respect of the same; and determining the proportion of the expense to be borne by each of the cost of constructing, erecting and maintaining said depot. A copy of said supplemental agreement is hereto attached, marked Exhibit "B" and by way of reference made a part hereof.

4. That afterwards, on, to-wit: August 5, 1889, in conformity with the provisions of said several agreements ("Exhibits A and B") and in pursuance thereof, certain administrative officers and representatives of this respondent and The Union Pacific Railway Company, viz, G. W. Holdrege and J. G. Taylor representing the respondent, and Thomas L. Kimball, Ed. Dickinson and W. H. Hol-

comb, representing The Union Pacific Railway Company, and as incorporators for and on behalf of the said railroads, of said Depot Company, held a meeting of said incorporators and thereat adopted and legally executed and acknowledged articles of incorporation of the "Omaha Union Depot Company," and otherwise took legal steps to perfect said organization, and thereafter, on the 13th day of August 1889, filed the said articles in the office of the County Clerk of Douglas County, Nebraska, and same are entered in book "D" of Incorporations, at pages 361, 362, 363, 364 and 365; and thereafter, on the 16th day of August, a certified copy thereof, together with a certificate of organization, was filed for record in the office of the secretary of the State of Nebraska, and recorded in Book "G" Miscellaneous Incorporations, at page 526; and all things were had and done in respect thereof as by law required.

That thereafter, on to-wit: November 16, 1889, the books of said Omaha Union Depot Company were opened for the purpose of receiving subscriptions to its capital stock; and thereupon, on said day, fifteen hundred shares thereof were taken and subsbribed for (said number of shares being ten per centum of the authorized capital stock.) That of said shares The Union Pacific Railway Company and this respondent took each one-half, the same being represented on said books as follows:

| | |
|---|---|
| In the name of Thomas L. Kimball | 748 |
| In the name of Erastus Young | 1 |
| In the name of W. H. Holcomb | 1 |
| In the name of G. W. Holdrege | 748 |
| In the name of J. G. Taylor | 1 |
| In the name of W. A. Higgins | 1 |

That thereafter on, to-wit, November 19, 1889, pursuant to call, there was called and held at Omaha, Nebraska, a meeting of the stockholders of said Depot Company, and directors for the next ensuing year were duly elected. Upon the same day and immediately upon the adjournment of said meeting, a meeting of the said directors was had and by-laws adopted. And said Omaha Union Depot Company became, was and now is a body corporate, empowered by law to do and perform all things necessary and proper to be done for the accomplishment of those objects for which it was created.

5. This respondent further says that on the 31st day

of October 1889, W. J. Broatch, as Mayor of the City of Omaha, in virtue of his power as such, and in compliance with the request and direction of the city council of said city, as given in and by an ordinance of said council duly passed, approved and published, entitled "An ordinance calling a special election to vote upon the proposition to issue coupon bonds of the City of Omaha in the sum of one hundred and fifty thousand dollars to aid the Omaha Union Depot Company in the construction of a union railway passenger depot, railways and other works of internal improvement in the city of Omaha," issued his proclamation for and giving notice of the holding of a special election in said City of Omaha on the 28th day of November, 1889, for the purpose of submitting to the electors thereof the question of consenting or refusing to consent to the terms of the proposition whether the City of Omaha should issue the coupon bonds referred to, and in the amount specified, to aid the said Depot Company in the construction of its depot.

That pursuant to said proclamation an election for that purpose was held in the City of Omaha on the said mentioned date, and the proposition to issue said bonds was carried by an overwhelming majority. Said bonds were thereafter duly executed and registered according to law; but failed of delivery, as hereinafter shown; and are still undelivered.

6. Afterwards, on, to-wit, April 1st, 1890, the Omaha Union Depot Company; thereunto fully authorized, of the first part; the Union Pacific Railway Company of the second part, and the respondent, of the third part, entered into an agreement in writing, duly subscribed under the corporate seals of each, wherein and whereby, among other things, it was agreed that the said Depot Company would build, and this respondent and the Union Pacific Railway should aid in the construction and erection of said depot and the trackage, appliances and appurtenances therefor, by advancing to the said Depot Company such sums of money as should be required to pay for lands, and for the labor and material necessary to construct and complete said depot and its appurtenances in the proportion of one-half thereof by each of said railroad companies, to be by them paid upon written requisitions therefor, to be signed by the pres-

ident of the Depot Company and countersigned by its treasurer. The money thus to be advanced by said railroads to said Depot Company was agreed to be repaid with interest from the date of each advance, and to be secured by first mortgage bonds for the full amounts advanced with the interest; and also shares of its full paid capital stock to an amount equal to such bonds and certain other amounts in addition. Said bonds were to bear date January 1st, 1892, and to run ninety-nine (99) years to maturity.

In consideration of the lands to be conveyed, and the amounts of money to be advanced by said railroads, and the mutual agreements in the said contract contained, the said Depot Company was to construct and complete said depot building and a viaduct along Tenth Street between Jackson and Marcy streets, in accordance with plans and specifications to be approved by the said railroads.

As heretofore stated The Union Pacific Railway Company and this respondent, agreeably with the provisions of the said contracts were to convey to said Depot Company, certain of the lands owned or controlled by each for depot grounds, as soon as each obtained the title thereto free of any and all restrictions, limitations, conditions and incumbrances and to that end, pending proceedings to so clear said titles, each of said parties were to deliver to said Depot Company its bond for deeds, but in the meanwhile to convey by lease rather than delay the progress of the work.

In consideration of the performance by the said rail roads of the agreements referred to, the Depot Company leased and granted to said railroads, as tenants in common, the said Union Depot appurtenances, for the term of ninety-nine (99) years, upon the terms and conditions, and at the charges and rentals in said agreement provided for. A copy of said agreement is hereto attached, marked Exhibit "C" and by way of reference made a part hereof.

7. That early in the year 1890, and subsequently, the said depot Company acquired by purchase and condemnation certain lands, in the City of Omaha, exclusive of that agreed to be conveyed to it by said railroads, but in addition thereto, for necessary depot grounds, terminals, tracks, approaches and appurtenances, and paid therefor a large sum of money, to-wit, $115,000.00 and which said

sum was advanced by the said railroads from time to time as provided in Article I of Exhibit "C," and the title to said property and lands is still in the said Depot Company.

That said Depot Company secured the work of a competent engineer and set to the work of making the necessary surveys of said grounds; secured detail plans and specifications for a union depot, adopting finally those prepared by Howe & Van Brunt which called for a large, modern, commodious depot, perfect in all its appointments, to cost the sum of $1,500,000. That after the adoption of said plans, bids were invited for the preliminary work of grading and excavating, and contracts therefor let; and said work was thereafter performed and the cost thereof, amounting to a large sum of money, paid by the said Depot Company, from money advanced to it for said purpose by the said railroad companies, pursuant to the provisions of Article I of Exhibit "C." Finally Bids were invited for material and construction, and for the completion of said depot, and contracts therefor let, and the work begun and continued to progress until the commencement of a suit in the District Court of Douglas County, brought in and by the name of Ernest Stuht, as plaintiff, against said Depot Company, and others, for an injunction to restrain the doing of certain things as prayed therein, and hereinafter more particularly referred to, when the work of construction was arrested and suspended, and has ever since, to-wit, since the spring of 1891, been in abeyance. That the cost of construction, materials and land for said depot up to said time greatly exceeded the sum of $500,000. and was paid for by the said Depot Company out of the money advanced to it by the said railroads, pursuant to the provisions of Article I of Exhibit "C."

8. That in the year 187–, the inhabitants of the city of Omaha and Douglas County, in order to induce The Union Pacific Railway Company, then engaged in building a line of railroad from Council Bluffs, Iowa, its eastern terminus, to Ogden, Utah, to locate its depot in the city of Omaha and for that purpose to build a bridge across the Missouri river at said point, voted and issued their bonds, the former in the sum of $200,000, and the latter in the sum of $250,000.00, and sold or disposed of the same, and with the proceeds thereof, saving and ex-

cepting a portion given to the said Union Pacific Railway Company, purchased the lands, embracing twenty acres, more or less, described in a certain conveyance from Alvin Saunders, Trustee to said Union Pacific Railway Company, of date January 20, 1872, and recorded in Book 12 of Deeds, page 220, in Douglas County, Nebraska. Said lands were therefore conveyed to said Saunders in trust for the uses and purposes and upon the conditions and limitations in said deed expressed, by divers persons, under the direction of a commission or Board of adjustment appointed by and representing the City of Omaha to effect settlement with the owners of certain of said lands, required for depot and transfer grounds and right of way to connect with said bridge over the Missouri River and adjacent thereto on the west end thereof. The Union Pacific Railway Company having previously entered into an agreement with the City of Omaha and the County of Douglas, in relation to the issuance of the said bonds, and for the occupancy of said lands for depot grounds and trackage, the City of Omaha, by ordinance, on January 2, 1872, directed the said Saunders, Trustee, to convey the lands hereinbefore referred to to said Union Pacific Railway Company, in accordance with the terms and upon the conditions contained in the said contract between said Union Pacific Railway Company, City of Omaha and Douglas County. Thereupon, on the 20th day of January, 1872, the said Saunders, Trustee, as empowered and directed by the said ordinance conveyed the said lands to The Union Pacific Railway Company upon the conditions and restrictions recited therein, and delivered the deed therefor to the said railroad, and which deed was recorded as above stated.

In the agreements of May 2, 1889 (Exhibits "A" and "B" respectively), The Union Pacific Railway Company undertook to convey to the union depot certain of the lands conveyed by the said Saunders, trustee; and thereupon negotiations were had between The Union Pacific Railway Company and the City Council of the City of Omaha, looking to the conveyance in fee simple by the City of Omaha to The Union Pacific Railway Company of the lands so as aforesaid conveyed by Saunders, trustee. The result of these negotiations was that on the 12th day of November, 1889, the City Council of the City of Omaha,

passed an ordinance, in terms, directing the mayor of Omaha and said Saunders to convey to The Union Pacific Railway Company by proper deed in fee simple title, the lands conveyed as aforesaid upon conditions. This respondent is advised, however, that said deed was never executed; but if so, was never delivered for the reasons hereinafter stated.

9. On or about December 30, 189.. and after the execution and registration of the bonds hereinbefore referred to, and before the execution and delivery of said deed from the City of Omaha to said Depot Company, one Ernest Stuht a citizen and taxpayer of the City of Omaha, on his own behalf, as well as for all others desiring to become parties plaintiff, filed his petition in the District Court of Douglas County, Nebraska, against the City of Omaha, its executive officers, the Omaha Union Depot Company, its executive officers and others, praying therein an injunction against the said City of Omaha, its mayor and officers, to restrain them from delivering or disposing of the said bonds and the said deed, and praying the cancellation and surrender of said bonds so as aforesaid voted and issued to aid in the building of said depot; and such proceedings were had and done therein, in said cause, that on the 10th day of June, 1893, the said District Court entered its decree perpetually enjoining the delivery of said bonds and directing their cancellation, surrender or destruction; and enjoining the defendants from making and delivering, and the Omaha Union Depot Company from taking any instrument of title conveying title of the lands hereinbefore described. A copy of said final order or decree is hereto attached, marked Exhibit "D" and by way of reference made a part hereof. And said decree stands unmodified and unreversed, no proceedings for that purpose having been taken. The effect of said final decree was to render impossible the making of a deed in fee simple by the Union Pacific Railway Company to the said Depot Company of the lands by the former agreed to be conveyed; and the effect of that in turn was to hamper, delay and indefinitely postpone the completion of said depot.

Without a sufficient title to its lands the said Depot Company could not dispose of or float its mortgage bonds, and consequently could borrow no money to enable it to

complete its said depot. The railroads owning it could, under the then depressed financial conditions, afford no further assistance. The years of 1893 and 1894 were years of financial disaster and consequent business depression. Business of all kinds, including railroad traffic, was paralyzed; earnings reduced to a minimum, while stocks and securities became well nigh valueless. Railroads in order to avert insolvency and pay the fixed charges and cost of operation and renewals and repairs, were compelled to resort to the most exacting economy and even then the earnings were inadequate and insufficient to meet the same and many of the railroads were forced to invoke the strong arm of Courts of equity to prevent the segregation of their properties and to preserve and maintain the unity thereof against the assaults in detail of innumerable watchful and diligent creditors. The present conditions are a material improvement over those which obtained in said years and the prospects for a generous railroad business, as well as a revival in all business circles in 1895 and 1896 are very promising. Already there are evidences of returning prosperity; stocks are higher, securities are advancing, men are being employed, traffic is increasing and money easier. There can be no manner of doubt that before very long this respondent and The Union Pacific Railroad Company, if it be permitted to, will be able to complete the said depot.

10. This respondent further says that it is advised by counsel and so states the fact to be that it is perfectly competent for the said Omaha Union Depot Company to acquire title to the necessary lands by condemnation proceedings had for that purpose under the statute, and that the title to be derived thereby would be sufficient to enable said Depot Company to borrow a sufficient sum of money wherewith to complete the said depot, the same to be secured by its first mortgage bonds.

11. This respondent further says that the Chicago, Rock Island & Pacific Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company in virture of a contract in writing with the said Union Pacific Railway Company, of date January 1st, 1892, are entitled to the use and enjoyment of the said depot in perpetuity upon certain considerations contained in said contract. This

espondent now is and at all times has been ready and illing, so far as it may as a half owner of the said Depot Company's stock, to grant to the said Chicago, Rock Island & Pacific and Chicago, Milwaukee & St. Paul Railroad Company the use and enjoyment of the said depot.

This respondent says forasmuch as the said contract between the said Union Pacific and the said railroad companies, so far as it relates to the use and enjoyment by them and each of them of said depot was made for its benefit as the owner of one-half thereof, in this wise, that the effect of said agreement for depot uses by said parties would be to lessen the cost of maintenance to this respondent that therefore to that extent it has a vested right therein and entitled to the benefits to be derived therefrom.

12. This respondent further says that under the agreement of 1872, between the City of Omaha and The Union Pacific Railroad Company, the latter in consideration of the conveyance to it of the certain lands for depot purposes and to build thereon a depot, not only for its own use but for that of such other railroad companies as should desire to avail themselves of the same, and said lands were expressly conveyed upon those conditions and therefore impressed with a trust in favor of the public, and upon the non-performance by the said Union Pacific Company of the covenants in the said deed contained to be by it performed the title to said property and every part thereof was to revest in the donors.

This respondent is advised that the said Union Pacific Railway Company, although powerless in the premises and without authority of law, is about to and will convey to the Terminal Company a portion of said lands so held by it in trust as aforesaid.

13. This respondent further says that under the several agreements of the Union Pacific Company with this respondent it was perfectly competent for the former to convey to the Omaha Union Depot Company that part of the lands so agreed to be conveyed without violating any of the provisions of the Saunders deed. Said contract was necessary for the proper operation of the said railroad and the performance of its public duties and in compliance with the terms of the said contract with the city of Omaha. But this respondent is advised by counsel and so states the

fact to be, that it is not competent for the Union Pacific Company, or the Receivers in charge of and operating the same, to convey said property as contemplated, or any part thereof, to the Terminal Company, so called, and that said conveyance would be in violation of the conditions of said Saunders deed.

14. This respondent further shows and represents that if the Union Pacific Railway Company, or its Receivers in charge of the same, are permitted by this Honorable Court to enter into the proposed contract with the Terminal Company it will mean the abandonment by the said Pacific Company of any further consideration in respect to the building and completing the said depot under the contract of 1890, and that in consequence thereof this respondent and said Depot Company will be unable to proceed further therein, to the great and irreparable injury of this respondent, and to its loss and damage in the sum of approximately seven hundred and fifty thousand dollars, and it may be that if the Union Pacific, or the Receivers in charge thereof, are permitted to carry out their proposed contract with the Terminal Company, the Omaha Union Depot Company will be compelled to abandon its organization as a depot company and permit the property acquired by it for depot purposes to revert to the original owners thereof, to the great damage of the said Depot Company, this respondent, The Union Pacific Railway Company and the Rock Island and Milwaukee Companies.

15. This respondent further says that the effect of the proposed agreement between the Terminal Company and the Union Pacific and its Receivers should the latter be authorized by this Honorable Court to enter into it, will be to compel this respondent to enter said proposed depot, which it will be unable to do except at a large expenditure of money and a great loss in time in the movement of its trains to the east and west, or to compel it to build its own depot, which it can only do at a cost greatly exceeding that which it would be required to contribute under the several agreements of 1890 to complete said Omaha Union Depot.

16. This respondent represents to this Honorable Court in respect to its contracts with said Depot Company

and said Union Pacific Company for the construction of said depot, it has thus far performed all and singular its agreements and is ready and willing to proceed with the completion of the said depot as provided for in the said contracts.

17. This respondent while it submits to the order of this Honorable Court to show cause why the prayer of the petition of the several Receivers in this cause entitled herein, should not be granted, insists that it is not within the jurisdiction of this Honorable Court in this summary proceeding to call in question the claim of said company or authorize the same, nor authorize said Receivers to do what puts in jeopardy the rights of this respondent; nor does this respondent submit for determination its rights arising under the said several contracts of 1890 but only for the purpose of fully advising this Court in the premises and no further.

WHEREFORE this respondent submits that by reason of the premises this Honorable Court ought not to authorize the said Receivers of or The Union Pacific Railway Company, to make said proposed contract with said Terminal Company.

Chicago, Burlington & Quincy Railroad Company,

By Charles F. Manderson,
General Solicitor.

Charles J. Greene,
James E. Kelby,
Attorneys.

Attached to the foregoing Answer, is Exhibit "D," in words and figures following, to-wit:

EXHIBIT "D."

IN THE DISTRICT COURT, DOUGLAS COUNTY, NEBRASKA.

Ernest Stuht and John D. Howe, Plaintiffs,
vs.
The City of Omaha, Nebraska, the Omaha Union Depot Company, Alvin Saunders, et al., Defendants.
} Doc. 22 No. 314.

DECREE.

This cause coming on for final hearing was heard upon the testimony of the plaintiffs and defendants and arguments of counsel. The plaintiffs were represented by John D. Howe, pro se, and by J. M. Woolworth and J. C. Cowin; the City of Omaha by W. J. Connell, its attorney, and the Omaha Union Depot Company by C. J. Green and J. M. Thurston, its attorneys.

And the Court does now find that said proposed issue of negotiable bonds of the City of Omaha in the sum of $150,000, below described, is illegal and void, and that said city, its officers and agents, have no authority in law to execute, issue or deliver the same; to which finding, defendant, the Omaha Union Depot Company, excepts.

And the Court does also find that said City of Omaha, its mayor and common council, its city Clerk and comptroller, have no right, power or authority, to make, execute or deliver any deed of conveyance or other instrument, conveying, affecting or impairing the right, title, interest, trust, benefit and advantage of said city and of its citizens and inhabitants, in or to the real estate below described, to which finding defendants except.

It is therefore ordered, adjudged and decreed that said City of Omaha, its mayor and common council, its city clerk and comptroller, and officers, their and each of their successors in office, their agents and attorneys be and they are hereby perpetually restrained and enjoined from making, executing, issuing or delivering to Kountze Brothers of New York, or to any other party, any of the bonds of the City of Omaha described in the petition and amended petition herein, being the bonds of said city described in that certain proposition submitted at the election held in said city November 28th, 1889, under that certain ordinance of said city numbered two thousand two hundred and eighty-nine (2289) entitled "An ordinance calling a special election to vote upon the proposition to issue coupon bonds of the City of Omaha in the sum of one hundred and fifty thousand dollars ($150,000) to aid the Omaha Union Depot Company in the construction of a union passenger depot, railways and other works of internal improvement in the city of Omaha," approved October 30th, to which the Omaha Union Depot Company excepts.

And it is further ordered, adjudged and decreed that said City of Omaha, its mayor and city council, its city clerk and their successors in office, as well as all its officers, agents and attorneys, and said Alvin Saunders, be and they are hereby perpetually restrained and enjoined from making, executing, issuing or delivering to said Omaha Union Depot Company, or any other party, any deed of conveyance or other instrument which shall in any manner release, relinquish, affect or impair any right, title or interest, advantage or benefit of the city of Omaha, or its citizens or inhabitants in or to any of the said real estate described in said petition and amended petition, including that certain real estate in the deed of conveyance executed by Alvin Saunders, Trustee, to The Union Pacific Railway Company, dated January 20th, 1872, and recorded in book twelve (12) of deeds at page two hundred and twenty (220) and following Douglas County, Nebraska, records. And that said Omaha Union Depot Company, its officers and agents, be and they are hereby perpetually restrained and enjoined from receiving any such deed, instrument or title, to which decree relating to said real estate, all of defendants except.

And it is further ordered and decreed that the mayor, City Clerk and City Comptroller, or either of them, or their successors in office, or any other officer of said City of Omaha, who may have in his possession, or under his control any bonds of the City of Omaha that have been made or executed under said proposition so as aforesaid set out in said ordinance, number two thousand two hundred and eighty-nine (2289) of said City of Omaha, cancel and destroy or cause to be canceled or destroyed any and all of such bonds, to which the defendant, the Omaha Union Depot Company excepts.

And it is further ordered, adjudged and decreed that the defendants the Omaha Union Depot Company and the City of Omaha, pay the costs of this suit taxed at $ to which said defendants except.

The defendants are hereby given forty days from this date in which to prepare and serve their Bill of Exceptions in this case.

On the application of the defendants the amount of the appeal bond is fixed at $500, and the amount of the

bond to secure any supersedeas allowed by law at the sum of $1,000.

A. N. Ferguson,
W. C.

Judges.

June 10th, 1893.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

F. Gordon Dexter, et al.,
vs
Union Pacific Railway Company, et al. } No. 48 "R"

ANSWER OF CITY OF OMAHA.

And now comes the City of Omaha, having been made a defendant herein by order of the Court, and in pursuance of said order requiring this defendant to show cause, if any, why the prayer of the petition of the Receivers for authority to enter into a contract with the Omaha Bridge & Terminal Railway Company should not be granted, respectfully represents and set forth that a considerable portion of the lots, lands and real estate referred to and described in the agreement submitted to the Court are not owned absolutely and unconditionally by said Union Pacific Railway Company. but are either owned by this defendant or held and occupied by said Union Pacific Railway Company, subject to certain conditions and subject to certain rights of reversion to this defendant.

WHEREFORE, this defendant prays that any order or decree of this Honorable Court made herein be made subject to the title or rights of this defendant in or to any of said lots or real estate or any part thereof and without prejudice to such title or rights.

The City of Omaha,
By W. J. Connell,
City Attorney.

Endorsed: Filed September 4, 1895.

In the Circuit Court of the United States for the District of Nebraska.

F. Gordon Dexter and Oliver Ames, Trustees, Complainants,
vs
The Union Pacific Railway Company, et al., Defendants.

The United States of America, Complainants,
vs
The Union Pacific Railway Company, et al., Defendants.

Opinion.

Mr. Winslow S. Pierce for Dexter and Ames, Trustees; Mr. George Hoadly for the United States; Mr. John F. Dillon for The Union Pacific Railway Company; Mr. H. Snowden Marshall for Morgan and Atkins, Trustees, Mr. Henry W. Calhoun for the Central Trust Company, Trustee, Mr. W. R. Kelly for the Receivers.

Sanborn, Circuit Judge:

These causes come before the Court upon the exceptions to the Master's reports, which have been filed by the United States, and by Dexter and Ames, Trustees, under the first Mortgage of November 1, 1865, made by The Union Pacific Railroad Company.

The first question which these exceptions present is the relative rank of the liens of the Omaha Bridge Mortgages of April 1, 1871, and October 1, 1885, the general First Mortgage of 1865, and the Government claim for payment of the subsidy bonds upon that portion of the railroad known as the Bridge Division, which includes the Omaha Bridge and its approaches.

The exceptions challenge the finding of the Master that the Bridge mortgages evidence liens upon the Bridge Division superior to that of the Trustees under the general First Mortgage, and superior to that of the Government.

The Bridge Division consists of the Omaha Bridge,

which spans the Missouri River between Omaha and Council Bluffs, and about four miles of the main line which extends across the bridge between the two cities and a branch line in Council Bluffs about two miles in length. The Union Pacific Railroad was originally constructed from a point on the west bank, of the Missouri River near the northeast corner of Section 10, Township 15, Range 13 in the State of Nebraska, in a southwesterly direction about four miles to Bridge Junction, and thence westerly on the main line of the railroad now in use to a point about five miles west of Ogden, Utah. This was the line of railroad on account of which the subsidy bonds were issued, and none of those bonds were ever issued on account of that part of the railroad which extends across the bridge from Omaha to Council Bluffs. The railroad was completed in 1869, and all the subsidy bonds and all the bonds secured by the general first mortgage of November 1, 1865, were issued before 1870, and before the Omaha Bridge or its approaches were constructed. In this condition of affairs Congress in 1871 authorized the Union Pacific Railroad Company to issue bonds to the amount of $2,500,000 to raise money to build the Omaha Bridge and to secure payment of these bonds by a mortgage upon the bridge and its approaches. (16 Stats. at Large, Ch. 67, P. 430). The company accordingly issued its bonds for that amount and secured them by a mortgage on the bridge and its approaches, dated April 1, 1871. The company sold the bonds and with their proceeds constructed the bridge and that portion of its railroad known as the Bridge Division, which extends from Council Bluffs to a junction with its original line at Bridge Junction in Omaha and includes the short branch in Council Bluffs.

It is clear that when this mortgage was made neither the bondholders secured by the general first mortgage nor the Government had any lien upon the bridge or upon the Bridge Division of the present railroad, because neither of these were then in existence. It is equally plain that neither the Government nor these bondholders expected or intended that the security which they permitted the railroad company to offer in order to obtain the money to construct this bridge would be subordinate to their liens. The aggregate amount of the incumbrance upon the rail-

road as it was then constructed was more than $54,000,000. Neither the Government nor the holders of the first mortgage bonds could have intended or supposed that a third lien for $2,500,000 on four miles of this railroad, subject to their liens for $54,000,000, would induce purchasers to take these Bridge Mortgage bonds. On the other hand, it was plainly upon the theory that the mortgage of April 1, 1871, would constitute a first lien upon the bridge and its approaches, that Congress authorized—and the First Mortgage bondholders acquiesced in—its execution, and that the holders of the bridge bonds purchased them and furnished the funds which built the bridge. It would be unjust, inequitable and a violation of the faith upon which the bridge bonds were sold to permit the First Mortgage bondholders or the Government now to displace the lien of the bridge bonds, to destroy their security, and to appropriate to themselves the valuable improvement produced by the funds realized from the sale of these bridge bonds.

The mortgage of April 1, 1871, must therefore be held to be a first lien upon the Bridge Division of the Union Pacific Railroad Company.

We turn to the Omaha Bridge Renewal Mortgage. The Act of March 3, 1873 (17 Stats. at Large, Ch. 226, p. 509) permitted the railroad company to mortgage its property to secure any debt then existing or any renewal thereof. On October 1, 1885, the railroad company made a mortgage upon the Bridge Division to secure bonds to the amount of $1,250,000, which were to be issued and sold for the purpose of refunding the debt evidenced by the outstanding bonds secured by the mortgage of April 1, 1871. The mortgage of 1885 provided, that whenever the railroad company should pay any of the original outstanding bonds, an amount of new bonds equal in par value to the principal of those so paid should be issued and delivered to the railroad company to be sold: Under this provision of the mortgage 589 bonds have been issued and sold to the public, and 145 have been issued and pledged to Drexel, Morgan & Co., to secure a debt of the company.

It is insisted that these bonds are void because they were not issued in exchange for, or to pay, the original bridge bonds. But the railroad company had the right

to refund the debt secured by the First Mortgage upon its property and the method it adopted to accomplish that purpose was unimportant, so long as it did not increase its indebtedness. It might have exchanged new bonds for old; it might have sold new bonds and have applied the proceeds of the sale to pay the old ones, it might, with equal propriety, have first paid the old bonds and then have issued and sold the new ones to reimburse itself for these payments. It pursued the last method. It might, undoubtedly, have paid the old bonds and have satisfied and discharged the debt which they evidenced, if it had paid the bonds with that intention. But as long as the payments were not made to discharge the debt but as a mere means of refunding it, the debt and its security remain unimpaired. In the case in hand the railroad company paid old bonds, the principal of which aggregated $1,056,000, and 1056 new bonds were certified and issued to it on account of these payments, while only 734 of these bonds, including the 145 pledged to Drexel, Morgan & Co., are now outstanding. All these bonds bear the certificate of the trustee that they have been issued under the mortgage of 1885, and the purchasers and pledgees doubtless took them in reliance upon that fact. That mortgage provides that the original mortgage of 1871 shall be discharged of record or assigned and held for the benefit of the bonds issued under the new mortgage, as the holders of the new bonds may direct. I am unable to find anything in the process of refunding this debt which deprives these bonds of the security which the railroad company had the right to give, and which it intended to give, for their benefit, by the mortgage of 1885, and the lien of that mortgage must be held to be superior to that of the general first mortgage and to that of the Government upon the bridge division of this railroad.

An exception is taken to the report of the master because it finds that the Equipment Trust Indentures of October 1, 1887, and February 1, 1893, in which the American Loan and Trust Company is named as trustee, constitute a mortgage and lien upon the property described therein, superior to the lien of the Government. But it is admitted that if the true construction of those indentures be that they reserve title and possession to the

American Loan and Trust Company, then the rights of the Trust Company and the bondholders it represents are superior to those of the Government.

I am of the opinion that the title to the property described in the Equipment Trust Indentures is clearly reserved to the American Loan & Trust Company until the bonds are fully paid, and that its rights in the property described therein are superior to the lien of the United States.

Exception is taken to the report of the Master because he does not find that the mortgage of November 1, 1865, is subordinate to the right of the United States to retain and to apply to the payment of the subsidy bonds and interest, all compensation for services rendered by the railroad company for the Government.

This exception is based on Section 6 of the Act of July 1, 1862 (12 Stats. at Large ch. 120, p. 493), and Section 10 of the Act of July 2, 1864 (13 Stats. at Large, ch. 216, p. 360). Section 6 provides: "That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit despatches over said telegraph line, and transport mails, troops, and munitions of war, supplies and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service); and all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid."

Section 10 provides: "And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of despatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States."

There are two considerations which convince that this exception should not be sustained; one is, that Congress treated of the compensation to be applied to the payment of the subsidy bonds in another section of the same act in which Section 10 is found. In Section 5 of the Act it provided that only one-half of the compensation for services rendered for the Government should be applied to the payment of the bonds. It is improbable that Congress intended to treat of this subject again in Section 10, and to provide in Section 5 that *one-half*, and in Section 10 that *all*, of the compensation, should be thus applied.

The other consideration is, that the exception contained in Section 10 is limited to the provisions of the sixth section of the Act of 1862 "relating to the transmission of despatches and the transportation of mails, troops and munitions of war, supplies and public stores for the Government of the United States;" and it does not include its provisions relative to compensation therefor which it might easily have done by the addition of only two words, and which it undoubtedly would have done if Congress had intended to include its provisions as to compensation in this exception. Where as, in this case, there is no ambiguity in an Act of Congress, the only safe course is to presume that the legislative department meant what it said, and that it did not mean what it did not say.

Finally, it is urged that the Master erred because he did not report that the railway is subject to the provisions of the first sentence of the fifteenth section of the Act of July 1, 1862, which provides: "That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe." (12 Stats. at Large, Ch. 120, p. 496.)

But this provision of the Act of Congress established no right or title and created no lien in favor of any of the parties to these suits. At most, it imposes a burden upon the franchises granted to the railroad company for the benefit of the public, and it stands like any other burden imposed upon one who accepts a franchise. It was the duty of the Master, and it is that of the Court, to determine the amounts and the rank of the liens of the various

parties to these suits. In the discharge of that duty it has been necessary to consider and decide whether or not the Government had a lien upon this railroad for the compensation for services rendered by it to the United States which was superior to that of the general first mortgage. But the character and extent of the franchises granted to the Union Pacific Railroad Company and its successors, by the United States, the benefits conferred and the burdens imposed upon them for the benefit of those who are not parties to these suits, are described and defined in the Acts of Congress with a clearness and accuracy which the Court could not hope to rival, and it ought not to attempt to define them in the absence of the parties who are or may hereafter become pecuniarily interested in them. The provision of Section 15 in question was not enacted for the benefit of any of the parties to these suits, and it was properly omitted from the Report of the Master, because no issue relative to it has arisen herein. If this provision is a part of the franchise to operate this railroad, and if it imposes a burden inseparable from that franchise, the purchaser of the latter will take subject to that burden: If it is not a part of that franchise, and does not condition it, he will take free from this burden—and no opinion or decree of this Court in these cases could change that result in the absence of the parties that now are or may hereafter become pecuniarily interested in enforcing this provision. The exception upon this subject must be overruled.

Endorsed: Filed Jul. 29, 1897.
Oscar B. Hillis, Clerk.

In the United States Circuit Court for the District of Nebraska.

F. Gordon Dexter and Oliver Ames, 2nd, Trustees, Complainants,
vs
The Union Pacific Railway Company, et al., Defendants.

Motion of Receivers for dismissal of their petition dated August 6th, 1895, for authority to enter into a con-

tract with the Omaha Bridge & Terminal Railway Company.

The Receivers herein move the Court that their said petition dated August 6th, 1895, for authority to enter into a contract with the Omaha Bridge & Terminal Railway Company be dismissed.

Dated April 15, 1898.

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederick R. Coudert,

By W. R. Kelly,
Their General Solicitor.

April 15 1898.

Let the Receivers's said petition stand dismissed.

Walter H. Sanborn,
Circuit Judge.

Dated April 18 1898.

Endorsed:—Filed Apr 19 1898
Oscar B. Hillis, Clerk.

United States of America, } ss.
District of Nebraska. }

I, GEO. H. THUMMEL, Clerk of the Circuit Court of the United States for the District of Nebraska, do hereby certify the foregoing to be a true and correct copy of papers and proceedings, as indicated in the foregoing Index, in the case of *F. Gordon Dexter, et al., vs. Union Pacific Railway Co.*, No. 48 "R" in the above entitled action as the same appears of record in my office.

WITNESS my hand and the seal of said Court at Omaha in said District this 17th day of April A. D. 1903.

[SEAL] Geo. H. Thummel,
Clerk.

At this time the further taking of testimony was adjourned until the next day, April 22, 1903, at 11 o'clock A. M.

Omaha, Neb., April 22, 1903, 11 o'clock A. M.

Met pursuant to adjournment.

By agreement of parties adjourned until 2 o'clock P. M.

April 22, 2 o'clock P. M.

Met pursuant to adjournment, and the following proceedings were had:

Samuel C. Stickney called and sworn as a witness on the part of the complainants, testified as follows:

DIRECT EXAMINATION.

By Mr. Kellogg:

Q. Are you general manager of the Chicago Great Western Railway, and the Mason City and Fort Dodge Railroad Company.

A. Yes, sir.

Q. How long have you been general manager of the Great Western?

A. About nine years.

Q. And are you a civil engineer by profession?

A. Yes, sir.

Q. Are you a graduate of a school of technology?

A. Yes.

Q. What?

A. Massachusetts Institute of Technology.

Q. State whether the Mason City and Fort Dodge Railroad Company, the plaintiff, is constructing a line from Fort Dodge to Council Bluffs?

A. Yes, sir, it is.

Q. What is the condition of the work at present. How far has it progressed?

A. Well the grading and the bridging is substantially completed. The track is a little more than half laid and the track material is all on the ground under contract, and the contract has been let for completing the track laying.

Mr. BALDWIN: Between what points?

A. Between Fort Dodge and Council Bluffs; and the ballasting is going on, and the construction of telegraph lines, fences, buildings, stockyards, water stations, coal chutes, yards is all progressing and nearly completed. The railroad crossings in Council Bluffs are constructed and work has begun on the round house.

Q. You refer to the railroad crossings across what lines?

A. Well they cross the street car lines and the side-tracks of the Chicago, Burlington & Quincy.

Q. I show you the map, plaintiff's Exhibit 4-c, What does the ground colored yellow on that map indicate?

A. That indicates a part of the land owned by the Mason City and Fort Dodge Railroad Company.

Q. It is marked "Proposed Chicago & Great Western R," that is the Mason City & Fort Dodge Railroad Company land instead of Chicago Great Western?

A. Yes, sir

Q. Has it other lands there besides that?

A. Yes, it has a large amount of other land that connects with this land on the east end of what is shown in yellow on this print.

MR. BALDWIN: I object to the last question for the reason that it is incompetent, irrelevant and immaterial, and for that reason I move to strike out the answer.

Q. How far does that extend, or doesn't this map cover the whole city?

A. No.

Q. It has acquired its terminal grounds in Council Bluffs?

A. Yes.

MR. KELLOGG: Mr. Baldwin, your objection made to the incompetency of the testimony does not relate to the proving of title by oral testimony does it?

MR. BALDWIN: No, I mean by the objection that it is simply incompetent evidence under the issues in the case. I will make no objection to Mr. Stickney's statement as to what property the company owns, that is no objection based upon the fact that it is not proper evidence of title.

Q. Is that line graded through Council Bluffs to the right of way of the Union Pacific Railroad Company?

A. Substantially all graded.

Q. Ready for laying track?

A. Yes.

Q. When will you be ready to connect the track of the Mason City and Fort Dodge Railroad Company with the track of the Union Pacific Railroad Company, if permitted to do so?

MR. BALDWIN: Objected to as incompetent, irrelevant and immaterial.

A. About June 15, 1903.

Q. At that time the line will be completed, the laying of track will be completed from Fort Dodge to a connection with the Union Pacific Railroad at Council Bluffs?

A. Yes.

Q. State whether the connection shown on this map between the Union Pacific Railroad tracks and the Mason City and Fort Dodge is a proper and convenient connection, taking into consideration the location of the tracks of both companies?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

A. Yes, sir, it is.

Q. For the business of both companies is it the best connection that you know of in Council Bluffs?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

A. Yes.

Q. State why?

A. So far as the operation of through passenger trains is concerned, it connects with the principal passenger tracks of the Union Pacific road, their main double track line to what was originally their Broadway Depot, and the tracks that are used by the Chicago & Northwestern; in fact, their principal passenger tracks in Council Bluffs. So far as the interchange of freight is concerned, I discussed the proposed connection with Mr. Burt and he thought it was an advantageous location, both from his point of view and from ours.

Q. Mr. Burt, president of the Union Pacific Railroad Company?

MR. BALDWIN: I move to strike out that part of the answer of the witness relating to a conversation with Mr. Burt, as incompetent, irrelevant and immaterial.

Q. Was that conversation with Mr. Burt, the president of the Union Pacific Railroad Company?

A. Yes, sir.

Q. In the operation of passenger trains is it advantageous to have the connection near the station of the Union Pacific Railroad?

A. Yes, sir, it is advantageous to both parties to

have it either so near that for eastbound trains one stop at the station suffices for both the station and the junction, or else to have it far enough away so that after the train leaves the station and when it stops for the junction it will be clear of all station operations.

Q. Mr. Stickney, did you ever have any negotiations with Mr. Burt the President of the Union Pacific Railroad Company about the use of the Union Pacific Bridge and property between Council Bluffs and South Omaha?

A. Yes.

Q. State how those negotiations were commenced and what was said between you and Mr. Burt in reference to the use of that property by the Mason City and Fort Dodge Railroad Company.

MR. BALDWIN: We object to this as incompetent, irrelevant and immaterial, being secondary, hearsay and not the best evidence, no authority being shown upon the part of Mr. Burt to conduct the negotiations or to consummate the same.

MR. KELLOGG: Mr. Baldwin, we have two or three letters written to Mr. Burt, have you any objection to our using the letter press copy or the manifold copy?

MR. BALDWIN: I don't think I will have any objection if you will let me see what they are. I think I know something of the correspondence.

Q. Well, you may state now how those negotiations were commenced and what was said between you and Mr. Burt in reference to the use of that property by the Mason City and Fort Dodge Railroad Company?

A. About October 30, 1901, I called at Mr. Burt's office. He wasn't in the city. I saw his assistant, Mr. Orr. At Mr. Orr's suggestion I explained my errand to him and he said that Mr. Burt certainly would want to consider making a trade with us for the use Union Pacific Bridge.

MR. BALDWIN: I object to the conversation with Mr. Orr, who is not the assistant to the President and who had no authority to make any such statement as that, therefore it is incompetent, irrelevant and immaterial.

MR. KELLOGG: It explains the letter.

A. (Continued.) The point of it is that he asked me to write to Mr. Burt.

Q. Did you write Mr. Burt?

A. Yes, November 7, I wrote to Mr. Burt. Then a few days afterwards I wrote to Mr. Burt again.

MR. BALDWIN: You can offer this, and after I see our files I can make my objection if you consent.

Q. Is the letter which you have in your hand a copy of the letter to Mr. Burt, except the signature?

A. Yes, sir.

Q. Was the letter signed by you?

A. Yes, sir.

MR. KELLOGG: We now offer in evidence the letter referred to.

MR. BALDWIN: We object to this as incompetent, irrelevant and immaterial. This objection is not intended to cover the fact that this is a copy.

The letter referred to is read in evidence and is as follows:

Nov. 7th, 1901.

Mr. H. G. Burt,
Prest. Union Pacific Railroad, Omaha, Neb.

Dear Sir:

About a week ago I called at your office in your absence. I saw Mr. Orr. I explained my errand to him, which was to find out what, if any, arrangements we could make with you to run our passenger trains into the Union Station at Omaha.

Our road is under construction and we want to know exactly what we can do for passenger terminals at Omaha before we settle on the freight terminals.

Will you kindly let me know what terms you will make for the use of your station and for the use of your bridge?

If you want to see me, I will make it my business to come to Omaha almost any day you will set.

Yours truly,

General Manager.

Q. Did you write another letter to Mr. Burt?

A. Yes.

Q. On what date?

A. November 22nd, 1901.

Q. Is the letter I now hold in my hand a copy of that letter with the exception of the signature?

A. Yes, sir.

Q. Was this letter signed by you, Samuel C. Stickney, General Manager.

MR. KELLOGG: We now offer in evidence the letter referred to.

MR. BALDWIN: We object to this letter as incompetent, irrelevant and immaterial. This objection is not intended to cover the fact that this is a copy.

The letter referred to being read in evidence is as follows:

Nov. 22, 1901.

Mr. H. G. Burt,
President Union Pacific Railroad, Omaha, Neb.,
Dear Sir:

November 7th I wrote you to ascertain what terms you would make for the use of your station at Omaha, reaching it the same way that the Illinois Central passenger trains do; also what terms you would make for the use of your bridge also for passenger trains only.

Will you kindly let me know whether you will make us a proposition on either or both of these plans? I am going away in a few days for ten days or such a matter and after about the 5th of December, I can meet you at your office, if you wish.

Yours truly,

General Manager.

Q. Did you get a reply to that letter from Mr. Burt?

A. Yes, sir.

Q. Is this the letter dated December 4, 1901, is this letter that reply?

A. Yes, sir.

MR. KELLOGG: I now offer the letter referred to in evidence.

MR. BALDWIN: The letter is objected to as incompetent, irrelevant and immaterial.

The letter referred to being read in evidence is as follows:

SUBJECT: Terminal facilities at Omaha.

UNION PACIFIC RAILROAD COMPANY.

In your reply please refer to
No.....

Union Pacific
The Overland Route
World's Pictorial Line.

Omaha, Dec. 4, 1901.

Dear Sir:

Yours of the 22nd ult., is received.

If you wish to talk over the matter of terminal facilities at Omaha I should be pleased to see you here some day this week or the fore part of next.

Yours truly,
H. G. Burt,
President.

Mr. S. C. Stickney,
General Manager,
C. G. W. Ry. Co., St. Paul, Minn.

Q. Pursuant to that letter did you see Mr. Burt in Omaha?

A. Yes.

Q. About what date?

A. I met him at his office the 11th of December.

Q. 1901?

A. 1901.

Q. Please state what was said by you and what was said by Mr. Burt in reference to the use of the Union Pacific Terminals?

MR. BALDWIN: We object to that as incompetent, irrelevant and immaterial.

A. Well, I told him that we wanted to make an arrangement to use the Union Pacific Passenger Depot at Omaha and that while we might get into it the same as the Illinois Central did; we would prefer to cross the bridge directly the same as the other roads. He said that they didn't want any more roads entering by the route that the Illinois Central used, as it was awkward and caused confusion in the place, and asked me why we didn't use the Union Pacific terminals all the way through the same as the Chicago, Milwaukee and St. Paul, and the

Rock Island. I asked him on what terms we could use those facilities, and he said that we could do so on just exactly the same terms as the other roads, viz: $45,000.00 a year, and our share of certain expenses etc., which he could tell me more about in detail, if I was interested. Then he explained at some lenghth what the arrangement was for handling trains, including the empty passenger trains to and from the yards, handling live stock, packing house business, and what we call house freight, team track freight, etc., and sent for the Assistant General Auditor, Mr. Bettis, and explained to Mr. Bettis the information he wanted me to have, and at Mr. Burt's suggestion I went with Mr. Bettis to Mr. Bettis' office and went through the vouchers, or rather the bills and records and accounts pertaining to that matter and also pertaining to the Chicago and Northwestern use of the facilities for the month that they then had—that they were then—the last month finished up in the Auditor's office. From that I got a fuller understanding of what Mr. Burt had been explaining to me. Then I came back to Mr. Burt's office, and had only just got gotten there again when he was called out of the office. While he was gone I wrote out a form of a proposal in the form of a letter addressed to myself and wrote out a copy of it. When Mr. Burt came back, which he did after a few minutes, I explained to him that if he would give me a written proposition in accordance with the conversation we had had that I would present it to the proper officers of our company for acceptance. Then Mr. Burt said he would have to submit the matter to the executive committee in New York and I left with the understanding that——

Mr. BALDWIN: Of course if you think that is responsive to the question, I dislike to interrupt, but I must make objections here to this. I move to strike out the entire answer of this witness as incompetent, irrelevant and immaterial.

Q. Have you the original memorandum which you wrote out at that time in Mr. Burt's office?

A. Yes.

Q. Did you show that to Mr. Burt?

A. I wrote out two and left one with Mr. Burt.

MR. WOOLWORTH: One was a copy of the other?

A. Yes, sir.

Q. Mr. Stickney will you read————

MR. KELLOGG: I now offer in evidence the letter, a duplicate of which Mr. Stickney, the witness now on the stand, left with Mr. Burt to be addressed to Mr. Stickney, the General Manager of the Chicago Great Western.

MR. BALDWIN: We object to this as incompetent, irrelevant and immaterial.

The letter referred to being read in evidence is as follows:

S C Stickney G Mgr C G W

The U P Co will make contracts with the C G W Ry Co or the M C & F D R R Co for trackage between C. B. & So Omaha and for frght and pasgr terminals at Omaha exactly similar to the contracts now in effect between the U P and the C M & St P or C R I & P provided you will signify your acceptance of this proposal within a reasonable time say 3 months. If accepted the contracts are to be made and signed as soon as possible but to become effective when your line is ready for operation but not later than Jan 1st 1904

Q. Now, Mr. Stickney, what did Mr. Burt say he would do about that?

MR. BALDWIN: Objected to as incompetent, irrelevant and immaterial.

A. Mr. Burt said that he would have to submit it to the executive committee in New York.

Q. Did he say anything as to whether he would do that or not?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Yes, he said he would.

Q. What did he say about its being accepted, as to whether or not it was advantageous to the Union Pacific Railroad Company?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Why he said he wanted to make it. He said he wanted us to use their terminals. He didn't want us to use the Omaha Bridge and Terminal tracks.

Q. Did he say why he didn't?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. No, I don't think he did. I don't remember. I wouldn't say that. I don't remember.

Q. Did he say anything about its being an advantageous contract for the Union Pacific Railroad Company?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

Q. Or a good contract for them to make, or something of that kind, I don't know the exact language.

MR. BALDWIN: This is objected to as incompetent, irrelevant and immaterial.

A. I remember that he said it was advantageous for the Union Pacific, and advantageous for all the roads to have common facilities, and that they were adequate for all the roads, for the business of all the roads, and at the Omaha terminals they saved some of the annoyances that were experienced at some other terminals.

Q. Did you make any memoranda of that conversation at that time?

A. Yes.

Q. Made them at the time?

A. Yes.

Q. Will you consult your memoranda and see if it refreshes your memory?

(Witness consults his memoranda.)

MR. BALDWIN: I object to the witness testifying from this memoranda for the reason that the same is incompetent, irrelevant and immaterial.

A. Yes, in reference to this side remark that I passed over before. I recollect it now distinctly, that he said he would recommend this to the executive committee because he thought it was to the interest of the Union Pacific to make the contract.

Q. You have given the substance of your conversation with Mr. Burt?

A. Yes, sir.

Q. Did you have any correspondence with him afterwards about it?

A. Yes.

Q. When did you next write to Mr. Burt?

A. January 16, 1902.

Q. Have you a copy of the letter that you addressed to Mr. Burt, with the exception of the signature?

A. Yes.

Q. Was it signed Samuel C. Stickney, General Manager?

A. Yes, sir.

MR. KELLOGG: I offer the letter referred to in evidence.

MR. BALDWIN: The letter is objected to as incompetent, irrelevant and immaterial. This objection is not intended to cover the fact that this is a copy and not the original.

The letter referred to being read in evidence is as follows:

January 16th, 1902.

Mr. H. G. Burt,
President, Union Pacific Railroad, Omaha, Neb.

Dear Sir:

Referring to the matter of our possible use of your bridge and terminals at Omaha which was the subject of our conference on December 11th last, I left a memorandum with you of the kind of a letter which I would like to receive from you, so that I can take the matter up definitely with our people. If you have had an opportunity to take the matter up with your Executive Committee, will you kindly advise me how they look at the matter and when, if at all, I may expect to receive a definite proposition from you?

The construction of our extension is progressing as rapidly as the season of the year will admit and while the decision of this terminal matter is not one of immediate importance, yet you will understand that it having been left to me, I would like to get it into definite shape as soon as practicable.

Will you not kindly let me hear from you at your convenience.

Are there any members of your Executive Committee that you would like to have our people see?

Yours truly,

General Manager.

Q. Did you receive a reply to that letter?

A. Yes, sir.

Q. What date was that reply?

A. January 31, 1902.

Q. Is the letter which I show you the letter from Mr. Burt?

A. Yes, sir.

MR. KELLOGG: I now offer in evidence the letter referred to, being the reply of Mr. Burt, dated January 31, 1902.

MR. BALDWIN: I object to this for the reason that the same is incompetent, irrelevant and immaterial.

The letter referred to being read in evidence is as follows:

SUBJECT: Terminal facilities, etc.

UNITED PACIFIC RAILROAD COMPANY.

In your reply please refer to
No.....

Union Pacific
The Overland Route,
World's Pictorial Line.

Omaha, Jan. 31, 1902.

Dear Sir:

Yours of the 16th inst. is received.

I have not yet had an opportunity of taking up in person with our people in New York the matter referred to therein. We are, on general principles, averse to making definite arrangements for so important a matter, so far in advance of the construction of your road and the necessity for the use of such terminals. My suggestion is, to let the matter rest until your road is well under way, or until you can fix a definite time for its completion and the taking effect of the proposed arrangement for terminals. There is no objection, of course, to your seeing Mr. Harriman or any of our New York people about the matter, but think it will not avail much until your project is nearer consummation than at the present time.

Yours truly,

H. G. Burt,
President.

Mr. S. C. Stickney,
General Manager, C. G. W. Ry. Co.,
St. Paul, Minn.

Q. Did you write another letter to Mr. Burt?

A. Yes, sir, on February 17, 1902.

Q. I will ask you if the letter that you have in your hand is the one that you wrote to Mr. Burt on that date?

A. Yes, sir.

Q. It is a copy?

A. Yes, sir.

Q. With the exception of the signature?

A. Yes.

Q. It was signed Samuel C. Stickney, General Manager?

A. Yes.

MR. KELLOGG: I now offer the letter referred to, in evidence.

MR. BALDWIN: I object to the letter being received in evidence for the reason that the same is incompetent, irrelevant and immaterial. This objection is not intended to reach the fact that the letter is a copy and not the original.

The letter referred to being read in evidence, is as follows:

Feb. 17th, 1902.

Mr. H. G. Burt,
President, Union Pacific Railroad,
Omaha, Neb.

My Dear Mr. Burt:

I have your letter of January 31st, in which you say you are averse, on general principles, to making definite arrangements for the use of your terminals so far in advance of the construction of our road, and you suggest to let the matter rest until our road is well under way or until we can fix a definite time for its completion and the taking effect of the proposed contract.

I hope you will kindly see that this matter is not entirely lost sight of and when the season has well opened I think we will be able to satisfy you as to the progress we are making and establish a definite time for the taking effect of the proposed contract.

Yours truly,

General Manager.

Q. Did you call on Mr. Burt again?

A. Yes.

Q. When?

A. On June 16, in company with the President of our company.

Q. What year?

A. June 16, 1902.

Q. Mr. A. B. Stickney was present?

A. Yes.

Q. Mr. Stickney did you receive from the Union Pacific officials, any of them, a map showing the proper connection to be made between the Mason City and Fort Dodge Railroad Company and the Union Pacific Railroad Company if such a connection should be made?

A. Yes.

Q. Now Mr. Stickney, at that meeting on June 16, what did Mr. Burt say, if anything, about getting this proposition submitted to his committee or authorized by it?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Mr. Burt told Mr. A. B. Stickney and me that he expected to get authority through his executive committee to make a contract with us similar to the contracts that he had with the Chicago Milwaukee & St. Paul, and the Rock Island for all the facilities they had the use of.

Q. Do you remember his saying anything about he wished us to use their line instead of the belt or terminal line?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Yes.

Q. Do you remember what he said, or the substance of it?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Why, Mr. Burt seemed to want to—he wanted to assure us that he was going to make a contract with us.

MR. BALDWIN: I move to strike out the answer as incompetent, irrelevant and immaterial.

Q. Well, state what he said.

A. And that he wanted us to use his terminals and not to make a contract with the only competitor he had for terminal facilities.

MR. BALDWIN: I move to strike out the answer as incompetent, irrelevant and immaterial.

Q. What did he say about having room enough?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Why, he said that they had room enough, that they had provided room enough.

Q. Had you previously any negotiations with the terminal company?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. Yes.

Q. What became of those negotiations after these conversations?

MR. BALDWIN: That is objected to as incompetent, irrelevant and immaterial.

A. After the repeated assurances of the President of the Union Pacific Railroad that we could use the Union Pacific Terminals on certain terms, the negotiations with the Omaha Bridge & Terminal Company were dropped.

Q. Was the Omaha Bridge & Terminal Railway subsequently sold?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

A. So I understand.

Q. To what company?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

A. The Illinois Central.

Q. On that date, or any time after that, did anyone connected with the Union Pacific furnish you with a map showing what would be a proper connection for the Mason City and Fort Dodge with the Union Pacific in Council Bluffs, if a connection should be made?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

A. During the meeting on June 16, between the presidents of the respective companies, under their instructions I went to the office of the chief engineer of the Union Pacific and indicated on their map of Council Bluffs the property we had acquired between Main Street and the Union Pacific Transfer grounds and indicated the location of our road on that property and connecting with

the Union Pacific in accordance with the conversations that I had had with Mr. Burt regarding the point of connection. I saw Mr. Sundland, who is in Mr. Berry's office—

Q. Mr. Stickney what did Mr. Sundland say?

MR. BALDWIN: We object to that as incompetent, irrelevant and immaterial.

A. He said he would send me a plat showing the connection, and send one also to Mr. Burt.

Q. Did you afterwards receive that plat?

MR. BALDWIN: We object to that as incompetent, irrelevant and immaterial.

A. Yes sir.

Q. State whether plaintiff's Exhibit 4–c or that part of 4–c which shows the Union Pacific Transfer grounds and depot, and the yellow line marked "Proposed Chicago & "GREAT Western Ry.," and the yellow land platted thereon, is a correct copy of the map sent you by the Union Pacific engineering department?

MR. BALDWIN: We object to this as incompetent, irrelevant and immaterial.

A. It is.

CROSS-EXAMINATION.

By Mr. Baldwin:

Q. I understand you to say that prior to the time you entered into negotiations with Mr. Burt with reference to arranging, if possible, with the Union Pacific for these facilities, you had entered into negotiations with the Omaha Bridge & Terminal Company?

A. Yes.

Q. With what officers of that company?

A. We had a written proposition from John R. Webster, I don't know whether he is president or vice-president.

Q. Had you correspondence on the subject?

A. Well, there had been a little correspondence, but the negotiations had been principally oral, and finally we received from them a complete written proposition, with maps and terms and everything that would be necessary to make a contract.

Q. Have you those maps and plats?

A. Yes.

Q. Will you please produce them?

Witness produces two maps, which are marked by the Examiner, Exhibits A and B, for identification only.

Q. The maps and plats marked Exhibits A and B, are the maps and plats, are they not, that were sent to you by Mr. John R. Webster of the Omaha Bridge & Terminal Company, and received by you?

A. They are not all of them. I thought I had all of them but they are not all here.

Q. Well, are those the principal ones?

A. Exhibit A is a general plat of all their property. Exhibit B is a large scale detail map or plat of their property.

Q. Exhibit B shows the line of railway of the Omaha Bridge & Terminal Company from a point in East Omaha and across the bridge of that company, across the Missouri River, and in and through East Omaha, west of the Missouri River to what point?

A. To First street.

Q. As indicated on Exhibit B, near what is marked "Center of Section 20"?

A. Center of Section 20.

Q. That is on the west side of the Missouri River, that point?

A. Yes sir.

Q. Is the line of the Omaha Bridge & Terminal Company exhibited any further or to any greater length on the plat marked Exhibit A, than on Exhibit B,? If so please indicate it.

A. Yes.

Q. Please indicate it. To what point?

A. Well "A" shows a connection between—shows a track over the east end of the bridge and a connection with the Union Pacific near their shops. Exhibit "A" also shows a line from about the corner of 10th street and Avenue "G" in East Omaha northerly and westerly to a connection with the Belt Line. It also shows the location of the Belt Line to South Omaha over which the Terminal Company has trackage rights. It also shows the location of certain property and tracks owned by the Omaha Bridge & Terminal Company at South Omaha, also shows the location of the tracks and yards west of the center of Section 20 extending from Locust Street on the north to Davenport Street on the south, a distance of

nearly two miles. It also shows about five miles of Omaha Bridge & Terminal Railroad property in Council Bluffs.

Q. Now do the red lines on the maps Exhibits A and B show the lines of the Omaha Bridge & Terminal Company as they appear upon these plats, as indicated by you in your last answer?

A. Substantially, yes.

Q. Does the Omaha Bridge & Terminal Company's line connect with the Belt Line in Omaha?

A. Yes.

Q. Where, on these maps, does it show that the Omaha Bridge & Terminal Company's lines connect with the Belt Line in Omaha?

A. Well, it is in the vicinity of Sherman Avenue—in the vicinity of the intersection of Sherman Avenue and Sprague Street.

Q. Then by a connection with the Omaha Bridge & Terminal Line and the Belt Line you could make a connection from the east side of the Missouri River, there in East Omaha, to the South Omaha Stock Yards?

A. I don't think so.

Q. Why not?

A. This proposition that we had is almost two years old, and the company has changed hands since it was made.

Q. I am not talking about that, but about the physical connection, Mr. Stickney?

A. Oh, I understand so, yes.

Q. Now, if you had consummated the tentative arrangement proposed in the negotiations with the Omaha Bridge & Terminal Company, how and in what manner were you to get into the Union Station of the Union Pacific at Omaha?

A. I don't understand that question.

Q. I understand you to have testified that at the time these negotiations were pending with the Union Pacific you had negotiations with the Omaha Bridge & Terminal Company for entrance into Omaha?

A. No, sir.

Q. Well, to cross the river then?

A. No, sir.

Q. Then, I misunderstood you, Mr. Stickney.

A. We had negotiations with the Omaha Bridge & Terminal Company which culminated in a written proposition from the Terminal Company several months prior to the time when the subject of terminals was taken up with the Union Pacific.

Q. Well, still, either I am very clouded in my question or you don't understand it. You have said that because of the repeated assurances of Mr. Burt, the President of the Union Pacific, that he would have it in his power to consummate the proposed arrangement that you desired, and, as you say, he desired, with the Union Pacific, you abandoned your negotiations with the Omaha Bridge & Terminal Company. Did you not so state in your examination here a few months ago?

A. Yes.

Q. So then you had under consideration negotiations for a connection and an entrance into Omaha, did you not? They were not consummated, but you had the negotiations—they were pending?

A. Well, the facts are just as I have stated. Now whether negotiations are pending or not after a proposition has been made, I don't know. They may be pending yet, in a sense.

Q. Now then what was, in a general way, this proposition from this Terminal Company?

A. Well, I have it here in writing.

Q. Well, let me see it. I don't want to encumber the record, but I just want a general outline.

(The witness hands to Mr. Baldwin a paper.)

Q. (Handing the witness the paper referred to.) I wish you would look at this paper which I hand you and state whether or not that is the proposition that you received from the Omaha Bridge & Terminal Company?

A. Yes.

Q. Now please examine Section 3, of Article 3, marked "South Omaha connection".

(Witness examines the portion referred to.)

Q. You have read it?

A. Yes.

Q. So under that proposition you were to have a connection to South Omaha, or could make a connection to South Omaha, could you not.

A. Yes,

Q. Now please indicate on the map where that connection would be, upon either of these maps, exhibits A or B, as defined in Section 3, Article 3—where that connection would be.

A. It begins at the intersection of Avenue "G" and 10th street in East Omaha extending north on the alley between 10th and 11th Streets, East Omaha, to Avenue "L," thence on a curve to the west to Avenue "M," thence west along Avenue "M" to or near the Missouri River meander line of 1856, thence northwest over Cut Off Lake on a trestle to a connection with the Omaha Belt Railway, at what is known as Sprague Station located at or near the intersection of Sherman Avenue and Sprague Street, Omaha.

Q. Doesn't that make a connection with the Belt Line?

A. Yes.

Q. The Belt line runs to the Union Stock yards?

A. Yes.

Q. At South Omaha?

A. Yes.

Q. So that in general terms you had a proposition from the Omaha Bridge & Terminal Company to make a connection on the Iowa Side of the Missouri River at the terminus of the Omaha Bridge & Terminal Company's line on that side of the river, did you not?

A. Yes, sir.

Q. Which would take you across the Omaha Bridge & Terminal Company's Bridge across the Missouri River would it not?

A. Yes.

Q. To the Nebraska side?

A. Yes.

Q. And on the Nebraska side, a connection with the Belt Line to South Omaha?

A. Yes.

Q. So that if you did consummate or make arrangements with the Omaha Bridge & Terminal Company you could get directly over these lines into South Omaha?

A. Yes.

Q. Now, in this proposition, in a general way you would make connection—could you make connection with any other railroads on the Nebraska side of the river?

A. I don't remember.

Q. I wish you would examine that proposition, refresh your recollection and state the railroads with which you could make connections on the Nebraska side.

A. The proposition covered a connection with the Burlington, Missouri Pacific, Union Pacific, C., St. P., M. & O., but we had had them thoroughly examined and some of the connections were inadequate to take care of any amount of business.

MR. BALDWIN: I move to strike out that part of the answer which says that after his examination they found them inadequate, as not responsive.

Q. I ask you as an experienced railroad manager and operator, after you had examined the properties in question, and this territory to which your attention has been called, was it possible to make the physical connections with the Belt Line, with the Burlington, the Union Pacific, the Missouri Pacific lines or tracks on the Nebraska side?

A. My recollection is that they already had those connections, as the proposition states.

Q. So the connections were made then?

A. Yes.

Q. It was not a question of whether it was possible or practicable, the connections had already been made?

A. Yes, sir.

Q. Please examine Exhibit A and indicate the terminus of the Omaha Bridge & Terminal Line on the Iowa side of the Missouri River. If in the City of Council Bluffs, indicate them?

A. They show four terminii.

Q. Please indicate them?

A. They show one at about the corner of Thirteenth and Grove Street "produced," one about a mile north of the Illinois Central Station in Council Bluffs, and one at the intersection of Union Avenue and Broadway, and one at about Fifteenth Avenue and Thirteenth Street.

Q. I understand you to have said in your examination in chief that either the Chicago Great Western or the Mason City and Fort Dodge owned blocks 7, 6, 5, 32, 31, 30, 29, 28, 27, marked in yellow on plaintiff's Exhibit 4-c?

A. Yes, sir.

Q. The line of the Omaha Bridge & Terminal Company in Council Bluffs runs and lays directly west of the property owned either by the "Great Western" or the Mason City and Fort Dodge in block 27, indicated in yellow on plaintiff's Exhibit 4–c?

A. Yes.

Q. And one of the termini of the Omaha Bridge & Terminal Company in Council Bluffs, as indicated between Fifteenth and Sixteenth Streets, is still south of the property owned by either the "Great Western" or the Mason City and Fort Dodge Railroad Company, as indicated in yellow on plaintiff's Exhibit 4–c?

A. Yes.

Q. A connection could be made then, could it not, with the "Great Western" or Mason City and Fort Dodge and the Omaha Bridge & Terminal Company, in that vicinity?

A. Yes.

Q. And if that connection was made under this proposition, and consummated throughout, you could go over these lines to the Stock Yards in South Omaha?

A. We would have a connection with the Stock Yards.

Q. Well, under this proposed plan, I ask you, Mr. Stickney, you could do that or not?

A. I don't know whether they contemplated us running to South Omaha or not.

Q. I did not ask you whether they contemplated your running to South Omaha, my question is whether or not you could do it?

A. We could run over the Union Pacific Road just as easy as we could over the Belt Line.

Q. Yes, and we think we will show that you can run over the Belt Line just as easy as you can over the Union Pacific. Is it not a fact that under the written proposition that you have from John R. Webster, Vice-President and General Manager of the Omaha Bridge & Terminal Company, under date of May 21, 1901. that you could have made connection as indicated by my prior interrogatory and questions, to the Union Stock Yards at South Omaha?

A. This proposition is not clear as to whether it was intended that we should operate our own engines over the

Belt Line Railway or turn over our business to the Belt Railway or the Terminal Railway to switch.

Q. Mr. Stickney, I am not asking you any question about the terms and details of the proposition. I ask you as an experienced railroad manager and operator, if, over the lines of railway of the Omaha Bridge & Terminal Railway and the Belt Line, as indicated in my prior interrogatories to you, and which were indicated by you upon Exhibits A and B, whether or not it was possible and practicable for the Mason City and Fort Dodge or the "Great Western" road to make its connection and go through and over these lines to the stock yards at South Omaha?

A. Can I read out of this? (Indicating a memorandum of some nature.)

MR. A. B. STICKNEY: He didn't ask you whether the proposition gave you the right to run over these lines. The question is whether it is a physical possibility to run an engine around that way.

A. Well, it is, certainly.

MR. A. B. STICKNEY: So it is a possibility to run down over the Burlington Road to Plattsmouth and up to the Union Stock Yards, isn't it?

A. Yes.

MR. A. B. STICKNEY: There's another physical possibility for you.

MR. BALDWIN: Well, I object to questions being propounded to the witness, while upon the stand, except by the attorney.

Q. So that you had received this proposition and had it under consideration prior to the time that you had these negotiations with Mr. Burt?

A. Yes, sir.

Q. You say the Omaha Bridge & Terminal Company sold out, I think was your phrase?

A. I said I understood that it was sold.

Q. To whom?

A. To the Illinois Central.

Q. Does the Illinois Central operate that bridge and the Omaha Bridge & Terminal Company's line?

A. I understand it does.

Q. You know, as a matter of fact, that it runs its trains over the property of the Omaha Bridge & Termi-

nal Company, as indicated on these maps, and over the Omaha Bridge & Terminal Company's Bridge to the Union Passenger Station in Omaha?

A. Passenger trains, yes, sir.

Q. Had you rejected the proposition of the Omaha Bridge & Terminal Company prior to the time that you had the correspondence with Mr. Burt, as indicated by the letter of Mr. Burt's being dated January 31, 1902, the letter of Mr. Burt to you, and your letter to Mr. Burt under date of February 17, 1902?

A. No.

Q. Did you ever reject that proposition?

A. No.

MR. BALDWIN: The defendant now offers in evidence as a part of the cross-examination of the witness, Samuel C. Stickney, Exbibits A and B, which have been referred to in the testimony of said witness.

JUDGE MCHUGH: Complainant objects to the introduction of these maps, as incompetent, irrelevant and immaterial, at this time.

Witness excused.

W. Scott King, a witness who has heretofore been sworn, and who has testified, is recalled by complainant, for further examination, as follows:

DIRECT EXAMINATION.

By Mr. Kellogg:

Q. Mr. King, since you were sworn, the engineers of the Union Pacific, in connection with Mr. Craig, have placed on plaintiff's Exhibit 4-b the railway properties owned by the various railway companies at South Omaha. Will you state what company owns the property inside of the green lines which is marked "Belt Line"?

A. The Omaha Belt Railway.

Q. And the tracks indicated inside of the green line are the tracks of the Omaha Belt Line?

A. Yes, all except one that crosses.

Q. Except one that crosses?

A. Near the B. & M. crossing.

Q. Which is marked "Fremont, Elkhorn & Missouri Valley Railway"?

A. Yes.

Q. Is that the Fremont, Elkhorn & Missouri Valley track?

A. It is to the point of the crossing of the B. & M. Railway.

Q. What company owns the property inside the yellow lines marked "B. & M. R. R. in Neb."?

A. Well that is B. & M., or on the records as the Omaha & North Platte Railway.

Q. What company owns the property marked "B. & M. Ry." or Omaha & North Platte Company?

A. The Chicago, Burlington & Quincy.

Q. Please state the property that is shown on this map belonging to the Union Stock Yards Company?

A. That portion west of the Union Pacific right of way, south of "F" street and west of a part of the Omaha Belt Railway lying directly west of the Union Pacific and north of "F" street and east of the Omaha Belt Railway right of way.

Q. All of the white tracks immediately adjoining the Union Pacific right of way and between * * and westwardly from the Union Pacific right of way, and between that and the Omaha Belt Line belong to the Union Stock Yards Company?

A. Yes, sir.

Q. Now does the Union Stock Yards Company also own the property between the Belt Line property and the Burlington further west?

A. Part of it, not all.

Q. Does it own all south of west "G" street?

A. No, it owns what is marked on this map block 305 and block 304 and block 260.

Q. South of that property and to the viaduct marked "Viaduct" here, being an extension of "L" street, and west "L" street, does the Union Stock Yards own that?

A. The Union Stock Yards owns all of that between the Burlington and the Omaha Belt.

Q. Does it own all of that south of that to the stock yards?

A. Yes, it owns all south of "L" Street and west of the Union Pacific down to "Q" Street, except three or four pieces that is owned by a packing company—three or four small pieces.

Q. How far west of the Union Pacific right of way does the Union Stock Yards property extend?

A. To 36th Street, about three-quarters of a mile.

Q. This Union Pacific map does not show all the packing houses and stock yards, does it?

A. No.

Q. Is Exhibit 4–c a correct map of the Union Stock Yards property in South Omaha?

A. Yes.

Q. Does it also correctly show the location of the various packing houses and the stock yards?

A. Yes.

Q. They are marked upon the map are they?

A. Yes.

Q. And are they situated upon the Union Stock Yards property between "Q" Street on the south, West "L" Street and the viaduct on the north, 36th Street on the west and the Union Pacific right of way and tracks upon the east?

A. They are situated upon what is commonly called the stock yards ground, but they own the ground upon which their buildings are situated, surrounded by the stock yards property.

Q. And within the boundaries that I designate?

A. Yes.

Q. What is the house of Swift & Company showing south of this boundary, "Q" street?

A. That is Swift & Company's packing house.

Q. Do the Union Stock Yards tracks reach all of the packing houses?

A. Yes.

Q. Does it also reach the stock yards?

A. Yes.

Q. Do the tracks of any other company reach these industries and stock yards?

A. No.

Q. I mean by "these industries" the packing houses and stock yards.

A. No.

Q. How many miles of railway are owned by the Union Stock Yards Company?

A. About thirty.

Q. And the north terminus of the Union Stock Yards tracks is at what point?

A. South of the B. & M. Bridge marked on this map "Viaduct."

Q. To make this clear, Mr. King, are the packing houses and Union Stock Yards reached exclusively by the tracks of the Union Stock Yards Company?

A. They are.

Q. All other companies tracks at South Omaha connect with the Stock Yards Company's tracks?

A. Yes.

Q. What railroad company handles all of the freight in and out of the stock yards and packing houses?

A. The Union Stock Yards Company.

Q. Now, Mr. King, what connection does the Fremont, Elkhorn & Missouri Valley Railroad Company have with the Union Stock Yards?

A. They connect with the Union Stock Yards tracks at the north end of the property immediately under the B. & M. Bridge.

Q. Previous to the construction of the lines shown on here in white, and described by Mr. Burt as the railroad belonging to the Chicago & Northwestern Railway Company, how did the Fremont, Elkhorn & Missouri Valley Company connect with the Union Pacific tracks at South Omaha?

A. They had no connection with the Union Pacific tracks.

Q. Well, how did they connect? How was freight delivered to the Union Pacific from the Fremont, Elkhorn & Missouri Valley?

A. I don't believe there was any interchange of freight at that point. I do not know of any. If freight came into South Omaha from the Elkhorn road for some other point, or for some of the local industries that were on the Union Pacific road, it was exchanged by the Union Stock Yards Company.

Q. Over the Union Stock Yards Company's tracks?

A. Yes, sir.

Q. Referring to plaintiff's Exhibit 4–b, what is the property embraced within the black lines?

A. Of my own knowledge I don't know.

Q. You don't know about that?

A. No.

Q. Well, is that map, Exhibit 1, a correct map of South Omaha and of the railroads and railroad properties, and of the Union Stock Yards properties?

A. Yes.

CROSS-EXAMINATION.

By Mr. Baldwin.

Q. Mr. King, this indicates the line of railway of the Omaha Belt Railway, in the green?

A. Yes, sir.

Q. And it owns this property here west of the Union Stock Yards tracks, does it not?

A. Yes.

Q. And it has as close a connection with the Union Stock Yards tracks as any line coming into the yards?

A. Yes.

Q. Now, is that being operated, is that operated now?

A. Yes.

Q. Do you know by what company?

A. The Missouri Pacific.

Q. Do the trains or cars of other roads come over that?

A. The Illinois Central comes over that.

Q. Isn't it the line on which the Illinois Central gets into South Omaha and out?

A. Yes.

Q. And does business at these stock yards?

A. Yes,

Q. Over this line indicated as the Omaha Belt Railway?

A. Yes.

Q. And has been doing its business in that manner and method ever since it has been in operation in Nebraska?

A. Nearly ever since it has been in operation in South Omaha.

Q. And it takes its cars in over the Belt Line and it takes them out over that line?

A. Yes.

Q. Doing the same character of business in that

regard as the Union Pacific, the Burlington or the Milwaukee or the Rock Island?

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. Kellogg:

Q. The green property at the south end of the Union Stock Yards, that is not the Omaha Belt Line property?

A. No, that is Chicago Rock Island and Pacific.

Witness excused.

George W. Craig, a witness who has heretofore been sworn and examined in said cause, is re-called by complainant, for further examination, as follows:

DIRECT EXAMINATION.

By Mr. Kellogg:

Q. Mr. Craig, referring to plaintiff's Exhibit 4–b, what is the property within the black lines?

A. The property of the Fremont, Elkhorn & Missouri Valley, or Northwestern system.

Q. *And* the Northwestern system, you say?

A. *Or* the Northwestern system.

Q. Do you know whether it belongs to the Fremont, Elkhorn & Missouri Valley or the Chicago & Northwestern system?

A. I understand that the Fremont, Elkhorn & Missouri Valley is now the Chicago & Northwestern.

Q. Have you looked at the records to see what company owns the property within the black lines?

A. No.

Q. It is either the "Elkhorn" or the Northwestern?

A. Yes, sir.

MR. BALDWIN: We make no objection as to whether it is the property of the "F. E. & M. V." or the Northwestern. It is the property of the "F. E. & M. V." or the Northwestern.

Witness excused.

At this time the further taking of testimony was adjourned until tomorrow, April 23, 1908, at 10 o'clock A. M.

Omaha, Nebraska, April 23rd, 10 o'clock A.M.

Met pursuant to adjournment, and further proceedings were as follows:

Alpheus B. Stickney, is here called and sworn as a witness on the part of complainant, testified as follows:

DIRECT EXAMINATION

By Mr. Kellogg:

Q. Will you state your full name?

A. Alpheus B. Stickney.

Q. What position do you occupy with the Chicago Great Western Railway?

A. I am President of the company.

Q. And you have been since its organization?

A. Practically, yes.

Q. What position do you occupy with the Mason City and Fort Dodge Railroad Company?

A. I am President of that company.

Q. Will you describe generally the location of the Chicago Great Western, the places it reaches and the connections, with the Mason City and Fort Dodge and the location generally of the Mason City and Fort Dodge Railway?

A. The Chicago Great Western Company owns and operates a line from Chicago running westwardly through the northern part of the state of Illinois, crossing the Mississippi River at Dubuque, running ordinarily westwardly —a little north of west—about seventy-five miles to a town called Oelwein then turning northwardly to St. Paul and Minneapolis, Minnesota. It also owns a branch line leading out of Sumner a town about fifteen miles north of Oelwein, practically a due west line, to a town called Hampton, in Iowa, and the Mason City and Fort Dodge Railroad has built a line from Hampton due west, to the town of Clarion, where it connects with the original line of the Mason City and Fort Dodge, about thirty miles northeast of Fort Dodge, and then is engaged in constructing a line from Fort Dodge, southwestwardly to Council Bluffs. The Mason City and Fort Dodge original line extended from Fort Dodge northeastwardly through the town of Clarion to Mason City, and it has built an extension from Mason City to Manley Junction, where it con-

nects with a branch of the Chicago Great Western line extending northwardly to Minneapolis and St. Paul. The Mason City and Fort Dodge Railroad, while it is being built by an independent company, has a contract existing, by which it will be operated as a part of the Chicago Great Western system, and in connection with the lines of the Chicago Great Western Company, which I have described, it will make a through line of railway from Council Bluffs and Omaha to Chicago, and also a through line from Council Bluffs to St. Paul & Minneapolis.

Q. Has it also a line of railway extending from Oelwein running southwest?

A. Yes, the Chicago Great Western has a line of railway extending from Oelwein southwest through Waterloo and Marshalltown, Des Moines, St. Joseph, Leavenworth and Kansas City.

The line of the Mason City and Fort Dodge Road between Council Bluffs and Oelwein is being constructed of a very superior character, and especially in relation to grades. The maximum grade between Council Bluffs and Oelwein is five-tenths of one per cent, or twenty-six feet to the mile.

The topography of this western country is such that railroads cannot be built on absolutely straight lines. The general features of the topography of the country is a high rolling prairie, and the great rivers like the Mississippi and the Missouri, have apparently cut gashes in this great prairie, down two, three and four hundred feet lower than the general level of the prairie, and the lateral streams running into the Missouri have cut other gashes, made valleys running down to the river and in approaching the Missouri river, or in getting away from the Missouri river, it is necessary for a railroad to follow, to a large extent, these valleys. I have before me a map, a topographical map (marked plaintiff's Exhibit 14). This map shows the topography of the country for some miles east and west of the Missouri River in the vicinity of Omaha and Council Bluffs. I have had marked on it, in a general way, the line of the Great Western road, or the Mason City and Fort Dodge Railroad, as it approaches the Missouri River from the east, following down the little valley of a creek called Mosquito Creek, which goes into the larger river—following down the little Mosquito Creek into the Big

Mosquito Valley, then making a detour around the point of bluff that is between the Mosquito River and the Missouri River, and terminates about a mile south of Council Bluffs. We attempted to make a straight shoot right through from the mouth of the Little Mosquito, right through that bluff; there was a slight depression there that we thought it possible, by a large expenditure of money, to get through and save a mile or two of distance, but in making the surveys we found it entirely impracticable to do it.

Q. The Mason City and Fort Dodge line is shown in red in that map?

A. Yes.

Q. Go ahead.

A. Now, in building this railroad through the country here, it was built for the purpose of reaching the business of Omaha—of the City of Omaha—

MR. WOOLWORTH: And South Omaha, too, isn't it?

A. Yes, and South Omaha, considering it all as one business. Now, the topography of the country that I have mentioned has forced, to a large extent, the railroads of Nebraska to concentrate on Omaha. If we had a map of Nebraska before us, we would see that the lines of railway have, in a general way, followed the lines of the water courses. Here is the Platte River coming in from the west, and seems to be a great artery of drainage, it has streams coming in from the north, and you can see by the map of the State of Nebraska, that it would show these lines of railroad following in a general way these water courses, and all concentrating and bringing their business to Omaha. Now the principal occupation of the people of Nebraska, and Northern Kansas, and all of this great territory here, until you get to the mountains, is agriculture, in its various forms. Some largely producing the cereals, but probably the largest occupation is the raising of live stock; the cereals being raised, to a large extent, for the purpose of feeding or producing live stock. At present, I should say, the largest product of the farms of this country, that is shipped, is live stock. Now this live stock is brought by all the railroads to the stock yards at South Omaha, and a railroad coming from the east, in order to participate in the largest single item of freight, must reach these stock

yards at South Omaha. The topography of the City of Omaha is such, that there is a range of hills to the westward, extending clear around the city, which are about two hundred feet above the river.

MR. BALDWIN: Mr. Stickney, excuse me just a minute. Mr. Kellogg, I don't wish to insist on having this done in this way of interrogatories or seriatim, but, of course, Mr. Stickney is giving a description covering some questions that I desire to object to. If you will let the record show the fact that I did not interrupt, but that my objection for incompetency, or whatever other reason I may assign, will be taken as belonging to the question to which he is now making answer is good, without interruption, then I don't care to interrupt; but there are some things there other than that that I also desire to object to.

MR. KELLOGG: Very well, they may be considered as being made without interruption.

A. As I was saying, the business portion of the city of Omaha, is built on a sort of plateau forty or fifty feet above the river, and that is surrounded by a range of hills you might say, or very broken country, ridges, rising about two hundred feet above the river, in some places these hills coming down close to the river, and in no place more than a mile or a mile and a half back from the river. There is one comparatively continuous valley through these hills, which is occupied by the Union Pacific and the Burlington—C. B. & Q. Railroad—to such an extent that it is practically impossible for another railroad to get through there—for an independent railroad to get through that gap. There has been another railroad constructed called the Omaha Bridge & Terminal Company, from a point in Council Bluffs pursuing a zig-zag course, crossing the Missouri River, two or three miles north of the Union Pacific bridge and then following in a northwesterly direction and by a very steep grade, climbing up onto the bluffs at a point about four miles due north from the Union Pacific Bridge. There it connects with the line known as the Belt Railroad Line which follows around over into another valley running nearly north and south, which reaches around to the stock yards, making a line of about thirteen miles to get the distance that the Union Pacific makes in about six miles.

Q. About six miles from where?

A. From Council Bluffs. I am informed, and I have been over the country personally myself enough to feel that the information is correct, that there is no gap in these hills between these two points, where it is possible to build a railroad through them. Now in getting to a city like Omaha a railroad must make provisions for its passenger business and for doing what might be called the local freight business of the town, and also for reaching this large live stock industry, which I have described at South Omaha. As soon as we decided to build the Mason City and Fort Dodge to Omaha, I commenced the consideration of the best means of reaching the business of Omaha it all its branches, the passenger business, the local freight business, and the business—the live stock business at South Omaha, as well as the general interchange of business—of through business, with the roads concentrating here from the west. I went over the lines of the Omaha Bridge & Terminal Company, familiarized myself with them, and the facilities they had to offer; and I found that the passenger business of the town—that the Union Pacific had built what they called—had carved out of their property, what they called a Union Depot Company, and that the passenger business of the town had concentrated there, and that the only way of reaching that passenger depot would be by going over the Union Pacific line, either crossing over their bridge and reaching it direct, or, by going over the Omaha Bridge & Terminal Company's Bridge by a circuitous line for part of the distance and then going over a portion of the Union Pacific line, along the west bank of the Missouri River and coming into the depot with a sort of a switch back, the same as the Illinois Central now reaches it. In any event to reach that passenger station, we must use a portion of the Union Pacific lines. The Omaha Bridge & Terminal Company has a line reaching down into the northern part of the city in such a way that very satisfactory terminals for doing the local, the strictly local business of Omaha, could be reached. It also had connections with the other roads centering here, in such a way that the through business or interchange of business between any road occupying that line and the other lines here, could be done fairly

satisfactorily. I also found that it had a comparatively short time arrangement, I think running about twenty years from the day it was made, which would practically leave it but fourteen or fifteen years to run, by which the busines at South Omaha could be reached in an unsatisfactory manner. After I had been over the Omaha Bridge & Terminal Company's line, and had gotten maps, etc. of them, I asked the General Manager of our company to—we had studied the maps together—to go and look it over and see what he thought of it. He did so. On one of his trips here, he told me that he met Mr. Burt, President of the Union Pacific, and Mr. Burt suggested to him, why not come in over the Union Pacific lines. I am free to confess, that at that time, I knew nothing about the laws or the statute under which the Union Pacific Bridge was built, nor the contracts which were existing in regard to the property which they had obtained here, and supposed that there was no way of getting over the Union Pacific lines or any portion of them. except by negotiations with them, and there were certain reasons at that time why I supposed it would be of very little use for me to undertake negotiations with them. But, it was so evident that if the Union Pacific lines could be made available, that it would be the best, that as soon as Mr. Burt made the suggestion that an arrangement could be made to come over their lines, why we took that matter up—the consideration of that matter up seriously. It ran along for some time, and nearly two years ago, I think it was June 1902—

Mr. Baldwin: June, 1902, was the time of the conference between you and Mr. Burt.

A. (Continued) Yes, June, 1902—I was down here with the General Manager of our company, and we called upon Mr. Burt, and I said to Mr. Burt—But Mr. Burt in his previous conversation with the General Manager—Well that is hear say, and I didn't hear him say it—I said to Mr. Burt that we had progressed so far with the construction of the Mason City and Fort Dodge road that there could be no longer any reasonable doubt but what we were going to build it, and I asked him if he was still of the same opinion that the Union Pacific would like to, or would be willing to, make an arrangement with us to use their lines, their bridge and lines to South Omaha, and such facilities as they granted other railroads here. Mr.

Burt said that as far as he was concerned he thought it would be for the interest of the Union Pacific to do it, and that while he had no authority to make a contract of that kind, he would be very glad to take the matter up with his people in New York, and he thought there was no doubt, but what they would be willing to make the arrangement. I asked him if he would take the matter up at once and give us an early reply and he said he would. I asked if he would like to have me take the matter up directly with his people in New York. Well, he said he had no objections to that, but he thought it was unnecessary. The matter ran along for several months, for some time at least, and not hearing anything from it, I called upon Mr. Harriman one day.

Q. Mr. E. H. Harriman?

A. Mr. E. H. Harriman of New York.

Q. What is his position with the Union Pacific Railroad?

A. Well, I understand he is "it".

Q. You understand he is Chairman of the Executive Committee?

A. Yes, I never knew what his official position was but I know he is regarded as the Union Pacific Railroad in the public estimation, as the controlling spirit. I called on Mr. Harriman, and I stated to him my conversation with Mr. Burt, and that I hadn't heard anything from it in a long time. He said "Well, I guess it is more my fault than Mr. Burt's, I either received a letter or Mr. Burt spoke to me about it, at any rate"—said he—"the matter has been called to my attention, but"—said he—"I have been so busy about other matters that I have not had time to give it any consideration at all, or any answer." Before he left he said he would take the matter right up and give it consideration and communicate with me.

THE EXAMINER: You say "Before he left?"

A. Before we parted, before I left his office. I am not certain whether he made an appointment for me to call some other day, or not, but I tried to see him once or twice after that and failed, and finally I said to Mr. Kellogg, our attorney, "Isn't there some way that you can get at this through the legal department and get a hearing through the legal department." Well, Kellogg said he

was acquainted with Mr. Pierce or Perse or what is his name?

MR. KELLOGG: Pierce, Winslow S. Pierce.

A. (Continued) Mr. Pierce and that he was a member of the Executive Committee and Chairman of the Board of Directors of the Union Pacific, and that he would talk it over with him, and I kind of turned the negotiations over to Mr. Kellogg to follow up; he reported from time to time that he had appointments to meet Mr. Harriman.

MR. BALDWIN: You don't think this is competent do you Mr. Kellogg?

MR. KELLOGG: No, I will have to testify to this.

MR. BALDWIN: I move to strike the answer of the witness out for the reason that it is incompetent, irrelevant and immaterial, as hearsay and as secondary evidence.

THE WITNESS: There is no hearsay about it that I turned the matter over to Mr. Kellogg as our agent to negotiate this business, that is a fact; and that my agent reported to me what he had done. There is no hearsay about that, that is a fact and I have a right to put it into the record.

MR. BALDWIN: No, no sir, there is no question but what you have put it into the record, and the question as to whether it is right or whether it is hearsay, any portion of it, will have to be determined hereafter.

A. (Continued) The negotiations ran along in that way until about the time this suit was commenced, about the 31st day of October, 1902. Mr. Kellogg had an appointment with Mr. Harriman, and Mr. Harriman was to notify him at my office. We waited until long after the hour and no answer came and finally I said to Kellogg, "go out to Omaha and commence that suit." After Mr. Kellogg left the office to go to the hotel and to his train, a boy came in and said Mr. Harriman would see Mr. Kellogg then, if he would come over to his office. I went over—Mr. Kellogg wasn't there to see Mr. Harriman. We talked the matter over and Mr. Harriman said "We have got plenty of room, we have got plenty of facilities to do your business there." Said he, "There is no objection on that account at all." But he says "Stickney, I understand you are planning to build a road west of the Missouri River." I told him no, there was no such plans at that time. Our plans were to build to Omaha but

whether we ever went any further west, would probably depend on how well we were treated by the western roads. But at the present there was no plan for going any further than Omaha. "Well," he said, "I think the Union Pacific would be willing to make a contract with you to use the bridge and facilities there as far as South Omaha on the same terms that the Chicago, Milwaukee & St. Paul have for them, provided that the contract shall terminate whenever you undertake to start west of South Omaha with a road." "Well," I says, "Mr. Harriman, I have been trying to get at you for two or three months here, standing around and waiting for a month at a time with no other business except to see you, and I have been unable to see you; now are you prepared to say that the Union Pacific will make such a contract, and are you prepared to make such a contract?" Well, he said he wasn't prepared to make such a contract, but he thought probably the Union Pacific would make that kind of a contract. "Well," said I, "I understand, Mr. Harriman, that under the laws and the contracts that the Union Pacific made with the City of Omaha, etc., that we have a right to the use of that property, the same use that we would get from such a contract, and that our rights would not terminate if in the future we should build a line west from Omaha." Well, he said he didn't know anything about that, but the Union Pacific wouldn't make any contract with us, except that contract contained an agreement that we should forfeit our rights in case we started to build west. Well, I then told him that we should commence a suit to assert what we considered to be our rights under the laws, and it didn't seem to scare him a little bit.

Q. Was that the end of the conversation?

A. That was the end of the conversation.

MR. KELLOGG: I offer this map, plaintiff's Exhibit 14, in evidence.

MR. BALDWIN: We object to that as incompetent, irrelevant and immaterial.

Q. Now, Mr. Stickney, what roads from the west reach Omaha and, speaking generally, what country do they reach and what country are they built in; can you tell and will you present a map showing it?

MR. BALDWIN: I object to this as irrelevant and

immaterial and for the reason that it is so abundantly proven by so many witnesses and by so many maps.

MR. KELLOGG: What I want to show is this—we show by these maps already introduced what roads terminate at South Omaha and Council Bluffs, but I don't suppose the Court will take judicial notice of the country reached by those roads.

MR. BALDWIN: I shall not object to Mr. Stickney stating what roads reach Omaha.

MR. KELLOGG: Well I want him to state generally where they reach over, for instance, the Chicago & Rock Island road, generally where does it reach?

MR. BALDWIN: I thought your question implied that he should enumerate all the different railroads that are shown here.

MR. KELLOGG: Oh, no.

A. The Rock Island extends to Denver, and down into Oklahoma, I believe, and I think they have a line down into Texas.

MR. BALDWIN: Yes, on down to El Paso.

MR. KELLOGG: I don't know but the easiest way to get at that is a small map showing it.

A. Of course, by looking it up on the map and refreshing my memory, I could tell you. Of course, I can't tell you, only in a most general way, where these systems do reach.

Q. Mr. Stickney, there is one point I would like to have you explain—

A. I want to say that we have no arrangement whatever to reach South Omaha over this Omaha Bridge & Terminal Company's line.

Q. After your talk with the Omaha Bridge & Terminal Company, was it sold out to the Illinois Central?

A. Yes, sir.

Q. Does the Illinois Central line have a line from Council Bluffs to Chicago?

A. Yes.

Q. And in connection with what road does it have a line to Saint Paul?

A. The Minneapolis & Saint Louis.

Q. Now, Mr. Stickney, suppose the Great Western should have a right to run its trains over the bridge of the Union Pacific as far as Twentieth Street, would that give

the Great Western any freight facilities in Omaha, or enable it to reach any facilities in Omaha for its freight business?

MR. BALDWIN: We object to that as incompetent, irrelevant and immaterial.

A. No.

Q. State why, please?

A. The location and grade of the main line and the Burlington line, and the line of the Union Pacific leading from Twentieth Street down onto the lower level are such that it would be impossible to get a track off from the main track between the bridge and Twentieth Street in such a way as to reach any freight terminals.

Q. How is it west of Twentieth Street?

A. Could be reached by leaving the line west of Twentieth Street and running back into the business part of the City of Omaha.

CROSS-EXAMINATION.

By Mr. Baldwin:

Q. Mr. Stickney, you are acquainted in a general way with the Illinois Central Railway system?

A. Yes, sir.

Q. It is larger and has more lines in the system than that of the Chicago Great Western?

A. Very much more.

Q. It has a line from Fort Dodge to Council Bluffs, Iowa, and to Omaha and South Omaha—from Fort Dodge, Iowa, to Council Bluffs, Omaha and South Omaha?

A. Yes.

Q. And also has a line from Fort Dodge to Chicago?

A. Yes.

Q. And by connections, to St. Paul and Minneapolis.

A. Yes.

Q. Its line between Council Bluffs and Chicago would be perhaps as short as your line when you complete the Mason City and Fort Dodge line between Council Bluffs and Chicago.

A. I think ours would be ten or twelve miles shorter.

Q. Yes, but I mean practically the same distance?

A. Yes.

Q. The facilities which are offered you under the

proposed arrangement with the Omaha Bridge & Terminal Company are all of the facilities, are they not, in Omaha and South Omaha, that are used and accepted by the Illinois Central?

A. No, oh no. The Illinois Central has the use of a portion of the Union Pacific tracks and the Union Pacific depot.

Q. Yes, but that connection, Mr. Stickney, was involved, was it not, in the proposition with the Omaha Bridge & Terminal Company?

A. Not to us.

Q. It was involved in the general scheme and plan of the Omaha Bridge & Terminal Company—the connection with the Union Pacific line was available if you could make the arrangement with the Union Pacific Company—I mean practically available?

A. You mean that we could reach the Union Pacific passenger depot if the Union Pacific Company would let us?

Q. Yes, the same as the Illinois Central does now.

A. Yes, if they would let us.

Q. In other words, if you could have consummated the same arrangement with the Union Pacific as the Illinois Central did, you could have reached the station under the proposed plan of the Omaha Bridge and Terminal Company?

A. Yes.

Q. Are there any industries or places or sources of freight that are not as well, practicably, and as practically reached by the Illinois Central as any other railroad in Omaha under its present arrangement?

A. I don't know what its arrangement with the Union Pacific Company is.

Q. I mean by that; following the lines of railway and these connections that it has in Omaha?

A. The great bulk of the heavy business of Omaha is situated on the Union Pacific tracks.

Q. Now, what are their industries and sources for freight that are not reached by the lines traversed by the Illinois Central, that are reached by any other railroad outside of the Union Pacific.

A. I think I stated, Mr. Baldwin, that the Omaha Bridge & Terminal Company reached the northern part

of the city in such a way that terminals of the purely local freight business—very satisfactory terminals for the purely local freight business of the City of Omaha could be obtained.

Q. The main objective point that you have to reach is the South Omaha Stock Yards?

A. Well, that and the passenger business, and of course we want to reach the local business of the town as well. If we should—if the Court should grant us what we claim here we should then have to provide a freight terminal of our own here in town.

Q. When you speak of the other connections or means of reaching South Omaha as practically impossible, do you mean as a railroad operator and manager, anything more than the question of expense?

A. Well, expense is an item of it. But the City of Omaha is located here on an uneven surface; it has established grades to its streets and spent a large amount of money in making these grades, paving them and in building viaducts and one thing or another, and in addition to the expense it would necessitate the changing of a large number of grades, leaving a great many houses and business buildings up in the air where they would be on inaccessible streets or down a valley with a big bank in front of them. It would destroy, or partially destroy, the value of a great deal of property, private property, besides the property that it would be necessary for us to buy to build the road on.

Q. You say from your personal examination of the premises in question that it is impossible to construct a line running along in the direction of the Burlington or the Union Pacific to South Omaha?

A. I consider it impracticable.

Q. Anything more than the fact that it would be expensive?

A. I have explained to you how it would interfere, how it would change the grade of the streets and inconvenience the citizens—and the Union Pacific has sidetracks extending out in such a way that there would have to be some change or some negotiations with them. With the Union Pacific friendly and desirous and willing to part with a portion of their right of way it would be practically a question of expense.

Q. From what place Mr. Stickney — Twentieth Street, or—

A. Twentieth Street, or I don't know but what further down, if they were willing to part with a portion of their right of way for us to build a track on.

Q. It is not impracticable to get a line from the Omaha Bridge & Terminal Company's lines, from its bridge, or from that neighborhood, on the Nebraska side, to Twentieth Street?

A, To Twentieth Street, at what point?

Q. Well, following down on the same line that the Illinois Central takes until it gets to the Union Pacific track, before it goes into the Union Pacific Station.

A. There is no way to do it except by the consent of the Union Pacific?

Q. Now then, assuming that it was the legal right of any other railroad in such a situation to condemn the right of way, even upon the right of way of another railroad, in a terminal like this, so that you could procure that, it is practicable to have that line in connection then is it not?

A. What is the object, what do you mean?

Q. You have said that if you could get on the right of way of the Union Pacific—you are proceeding upon the theory that that will have to be obtained by negotiation—but supposing that you could obtain it by legal proceedings, such as condemnation for right of way for your tracks or track, upon the right of way of the Union Pacific, then it is not practically impossible to make this connection to South Omaha, is it, or on the same line that the Illinois Central now traverses?

A. I don't know what is the use of assuming a thing that is not so.

Q. I beg to differ with you. I know instances where they have the right to do that—but assuming that to be so couldn't you get through in that direction?

A. Well, the question is not stated in such a way that it permits of an answer. If you will take the map and show what you mean I will try to answer it to the best of my ability.

Q. I have asked you to indicate, as you have already, the way the Illinois Central gets into Omaha, and the Stock Yards at South Omaha, and that system which is

larger and more extensive than yours reaches those competitive points by the use of the Omaha Bridge & Terminal Company's lines. Couldn't you reach those points in the same way?

A. We could get into South Omaha the same way as the Illinois Central does, provided the Illinois Central is willing, not otherwise.

Q. Were the negotiations which you had with the Omaha Bridge & Terminal Company ever terminated?

A. Well, I don't know whether they are terminated or not. Since we have had any active negotiations the property has changed ownership, and whether that is a termination of them or not I don't know.

Q. Well, I will ask you this: Was that proposition of that company ever rejected by you or your companies?

A. It was never accepted by us. I don't know—It never was accepted.

Q. Well, was it ever rejected?

A. Well, you must form your own conclusion. It has never been accepted.

Q. Is that the best answer you can give me, or the only answer?

A. Why, that is the only answer there is to it, as far as I know. I don't think we ever served any formal notice, if that is what you mean. If you mean that we ever served any formal notice on them that we rejected it, I don't think we ever did.

Witness excused.

Frank B. Kellogg called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT EXAMINATION

By Judge McHugh.

Q. State your full name Mr. Kellogg?

A. Frank B. Kellogg.

Q. What is your connection with the Mason City and Fort Dodge Railroad Company?

A. I am General Counsel of the Mason City and Fort Dodge Railroad Company.

Q. How long have you been General Counsel for that company?

A. Ever since the purchase in March, I think, or April 1900 or 1899.

Q. At any rate you were Counsel in 1900 and 1901, and ever since?

A. Yes, sir.

Q. You may state whether you were empowered to negotiate with the Union Pacific officials, with respect to procuring a contract from that company for the Mason City and Fort Dodge Railroad Company for the use of the tracks, bridge, depots and facilities between Council Bluffs and South Omaha and if you were, state what you did under that?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

A. Yes, I was, in August, 1902. I was in New York during the entire month and for a short time in the latter part of July, 1900. Mr. Stickney was going west and wished me, or requested me, to take the matter up.

Q. That is, Mr. A. B. Stickney, the President?

A. Yes, sir. I saw Mr. Winslow S. Pierce, who I understand is the Chairman of the Board of Directors.

MR. BALDWIN: No he is not Chairman of the Board.

MR. KELLOGG: He used to be.

MR. BALDWIN: Well, he is not now.

JUDGE WOOLWORTH: Well, he was at that time.

MR. BALDWIN: I don't think he was at that time.

A. (Continued.) Well, who I understood to be a director and a member of the Executive Committee of the Union Pacific road and General Counsel of the Union Pacific road. I had some conversation with him about the matter, which is not very material, except that he said he would make an arrangement with Mr. Harriman; that is, make an arrangement for me to meet Mr. Harriman the following week. I think this was early in August. The following week I called on Mr. Harriman pursuant to engagement. Mr. Pierce went with me, but I believe did not remain. I stated to Mr. Harriman that we were anxious to get an answer from the proposition, or rather from Mr. Burt's proposition relative to the Mason City and Fort Dodge Railroad Company using the tracks and facilities and bridge of the Union Pacific. In substance Mr. Harriman said, that he would have to submit that to the Executive Committee, that it

was in the summer vacation time and many of the committee were away and that he couldn't get them together before the 15th of September, but about that date he would have a meeting and submit the matter to the Executive Committee of the Union Pacific Railroad. I told him we were anxious to get an answer at as early a date as possible and he said that that would be as early as he could take the matter up with the Executive Committee. I left at that time, and didn't see Mr. Harriman again until October. I heard nothing from him in September. After I went to New York in October to renew the negotiations—I can't now state the exact date I saw Mr. Harriman—but I know I staid in New York for two or three weeks trying to get an interview and a final answer from Mr. Harriman in regard to the use of the bridge and terminals between Council Bluffs and South Omaha. Mr. Harriman stated several times—or made several engagements to meet me and give us an answer. For some reason or another he did not, or was not able to meet the engagement, and finally, during the last week of October he was to meet me on, I think it was Thursday, before the 28th of October—I am not positive whether it was Thursday or Friday. His secretary was to notify me of the hour at which Mr. Harriman would be at liberty, and finally notified me late in the afternoon that Mr. Harriman had gone to his country place and wouldn't return during the week. I didn't hear from him again. On the following Tuesday I think it was, the 28th of October, Mr. Stickney informed me that he had had an interview with Mr. Harriman, I was just leaving for the west and was going to the train at the time I saw Mr. Stickney and only saw him a few moments.

Q. You reported to Mr. Stickney as this negotiation progressed, what progress you were making?

A. I did. And several times said to Mr. Harriman that the road was nearing completion and that we must have an answer one way or the other about this matter, and from time to time he assured me that he would take the matter up with his Executive Committee. I think the last interview I had with Mr. Harriman that he was going to have a meeting of his Executive Committee that week, I am not absolutely positive as to the time of that meet-

ing, but I think it was on Thursday previous to October 28th.

Witness excused.

Alpheus B. Stickney having heretofore been duly sworn and examined in this cause is here recalled for further examination on the part of complainant, testifies as follows:

DIRECT EXAMINATION

By Judge Woolworth:

Q. Mr. Stickney, supposing you established your claims in this case to run your trains from Chicago, or from the east across the bridge and over the lines of the Union Pacific to South Omaha, what connections would you be in a situation to make with other companies at that place, and with what companies could you make those connections?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial.

A. We should be in position to deliver to and receive freight from all the roads that come in there at South Omaha. The Fremont, Elkhorn & Missouri Valley, The Missouri Pacific, The Rock Island west and the Burlington west and in fact all the roads and the stock yards.

Q. So that you would then, in connection with those roads, have a continuous line for traffic from the east through to the west, would you?

A. Yes.

Q. And one of your objects in going down there is to make connections with those western roads?

A. That is an important object.

CROSS-EXAMINATION.

By Mr. Baldwin:

Q. In Judge Woolworth's first interrogatory no point is mentioned for connections, where do you understand connectious would be made?

A. At South Omaha.

Q. Will you please state where, in what place, and in what manner you would be able to make connections with the Rock Island, for instance at South Omaha?

A. At the point of junction between the Union Pacific road and the Rock Island Road.

Q. Where in South Omaha, and how, could you make that connection?

A. Where?

Q. Where and how in South Omaha, if you were there, could you make the connection with the Rock Island road for the interchange and exchange of business?

A. The "where" is at the point of junction of the Rock Island and the Union Pacific, and the "way" would be, we would just open that switch and shove the cars right in on to the Rock Island track.

Q. How and where would you make connection with the Missouri Pacific at South Omaha?

A. At the point of junction with the Union Pacific and in the same way.

Q. Where and how at South Omaha, would you make a connection for the business you said you would have from the east to the west, with the Burlington?

A. The Burlington, as I understand it, runs over the Union Pacific part way, don't they? We couldn't make a connection with the Burlington at South Omaha, unless the Burlington had a right to run up—they have another line, comes in from the west, we could make exchange through the stock yards.

Q. Where would you make connection with the Northwestern—Fremont, Elkhorn & Missouri Valley?

A. The same way, at the junction.

Q. Is it not a fact, that all such connections would be made, with each and every of the roads concerning which you have answered Judge Woolworth, in Council Bluffs, for through business?

A. No, sir, it is not.

Q. Could not make your connections there?

A. No, sir.

Q. Why?

A. Because they don't go to Council Bluffs, the Missouri Pacific especially.

Q. I will ask you about the Burlington, the Chicago & Rock Island, and the Chicago, Milwaukee & St. Paul?

A. We didn't talk about the Chicago, Milwaukee & St. Paul, that has no line west and as long as the contract between the Rock Island and the Union Pacific exists and

the Rock Island runs their through trains that way, as a matter of fact we should probably make that exchange at Council Bluffs; but if that contract should be rescinded or the Rock Island should cease for any reason in the future to run through here on the Union Pacific then the only way we could make connection with them would be over there at Council Bluffs.

Q. Do you state that you couldn't make connections in the City of Council Bluffs with your through business with the Chicago, Rock Island & Pacific Railway, and by connection with the Illinois Central and Belt Line, with the Missouri Pacific and also the Chicago, Burlington & Quincy Railroad, or present railway, in Council Bluffs?

A. We can make connection with certain divisions of the Chicago, Burlington & Quincy in Council Bluffs. We couldn't make connections with them at Council Bluffs with their lines terminating here at South Omaha, with their western lines which terminate in South Omaha. The Missouri Pacific, as I have said before—we can reach them through the Omaha Bridge & Terminal Company as long as they are willing to allow us and no longer. We have no rights there.

Q. State what the difference would be—you would have to make the same negotiations and arrangements for connections at South Omaha as you would at Council Bluffs, or at Council Bluffs as you would at South Omaha?

A. The same.

Q. With the connecting line?

A. The connecting line don't reach Council Bluffs.

Q. Do you mean to be understood, as saying that if you had a car from your line at Council Bluffs that you wanted to send to Fairbury, Nebraska, on the line of the Rock Island that you could not make that connection at Council Bluffs and put that car through the same as you could at South Omaha?

A. I think I answered that distinctly before. As long as the Rock Island has the right to run over the Union Pacific line, and does run over it, then we can, but no longer.

Q. Well, that is the condition of your connection at South Omaha with the Rock Island, the Rock Island has to come across the Union Pacific Bridge, does it not?

A. What is it?

Q. That is the same condition that you have to encounter in your connection at South Omaha with the Rock Island, that the Rock Island has to come over the Union Pacific track, is it not?

A. Oh, no.

Q. I ask you if you have a car of freight destined from any point on your line east of the Missouri river to Lincoln, Nebraska, if you couldn't make a connection with the Chicago, Burlington & Quincy at Council Bluffs to get that car through the same as you could at South Omaha, outside of the mere detail of arrangement?

A. No, sir. Possibly we might take the car around by the way of Plattsmouth and across the Plattsmouth Bridge to Lincoln, I don't know, we might possibly do that; that may be the way they do it.

Q. Supposing you had a car at a point of origin at any place on your line east of the Missouri river destined to Fremont, Nebraska, or Chadron, Nebraska, on the line of the Chicago & Northwestern Railroad, do you mean to say you could not make that connection at Council Bluffs, the same as you could at South Omaha?

A. In picking out particular places like that, there may be some combination of routes here that I don't know of; I don't recognize the location.

Q. Well, they are places upon what was the Fremont, Elkhorn & Missouri Valley, but not the Chicago & Northwestern system in the state of Nebraska?

A. The only way we could do it would be to send it up over the—the Northwestern could take it at Council Bluffs, take it up to Blair and cross it over there. The only other way is to cross—or we might possibly make the connection, if they were willing, through this Belt Line and deliver it to them up in the north part of the city. But those are not things we have rights to do, they are dependent upon the good graces of some other company. We claim that we are entitled to the right to deliver over the Union Pacific and it is important for us to have that right.

Q. My questions are propounded to you irrespective to the questions of right, but as a matter of railway operation?

A. Those hypothetical questions—we can and do now deliver freight, get freight out in Nebraska some way

over the various lines, in various ways. But what we claim is that we are entitled to the right to connect with these roads from the west that concentrate here at South Omaha and interchange freight with them.

Q. We are well advised of the character of your claim of right. I am asking you though, whether or not those connections can be made, as I have indicated in my questions?

A. We can do it as long as the other roads choose to do it, that is all.

By Mr. Kellogg:

Q. The Missouri Pacific does not reach Council Bluffs?

A. No.

Witness excused.

Samuel C. Stickney having heretofore been duly sworn and examined in this cause is here recalled for further examination on the part of complainant, testifies as follows.

DIRECT EXAMINATION.

By Mr. Kellogg:

Q. When you first called on Mr. Burt did you ask him to make the same arrangement that the Illinois Central had, so that if you made an arrangement to come over the Belt Line to the north part of the City of Omaha you could come from that point to the Union Pacific depot over the same track as the Illinois Central does?

MR. BALDWIN: We object to that as incompetent, irrelevant and immaterial.

A. Yes. And he positively refused to entertain any such a proposition. Said that the Union Pacific made a mistake in making that kind of a contract with the Illinois Central and that he wouldn't make any such arrangement with any other road.

Witness excused.

At this time the further taking of testimony was adjourned until April 27th, 1903, at 10 o'clock A. M.

Omaha, Nebraska, April 27th, 1903. 10 o'clock A. M.

Met pursuant to adjournment.

Present and appearing for Complainant, Judge W. D. McHugh.

Present and appearing for Defendant, John N. Baldwin.

By agreement of parties the further taking of testimony was adjourned until April 28th, 1903, at 10 o'clock A. M.

Omaha, Neb., April 28, 1903. 10 o'clock A. M.

Met pursuant to adjournment.

The following proceedings were had, to-wit:

JUDGE MCHUGH: Complainant now offers in evidence the Articles of Union and Consolidation between the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, forming the Union Pacific Railway Company, it being admitted that the Articles offered are the original Articles of Union and Consolidation, as mentioned in the offer.

MR. BALDWIN: Defendant objects to the introduction of the Articles of Union and Consolidation, as above offered, as incompetent, irrelevant and immaterial.

The Articles of Union and Consolidation, as above offered are here read in evidence, and are as follows:

ARTICLES OF UNION AND CONSOLIDATION
Between the
UNION PACIFIC RAILROAD COMPANY, THE KANSAS PACIFIC RAILWAY COMPANY, AND THE DENVER PACIFIC RAILWAY AND TELEGRAPH COMPANY,
Forming
THE UNION PACIFIC RAILWAY COMPANY.

Whereas, The Union Pacific Railroad Company a corporation duly organized and existing under the Act of Congress of July 1st, 1862, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for Postal, Military and

other purposes," and the Act of Congress of July 2d 1864, and various other acts, amendatory of the foreg ' ing, owns a line of railroad and telegraph, extending from the Missouri River to Ogden in the Territory of Utah, a distance of 1,042 miles; and

Whereas, The Kansas Pacific Railway Company described in the said Act of Congress of July 1st, 1862, as the Leavenworth, Pawnee & Western Railroad Company, the name whereof was afterwards changed to that of the Union Pacific Railroad Company, Eastern Division, and again subsequently changed to the Kansas Pacific Railway Company, is a corporation which is entitled to participate in the benefits of the said Act of Congress of July 1st, 1862 and of July 2d, 1864, and the various acts amendatory thereof and relating thereto; and

Whereas, The said Kansas Pacific Railway Company owns and operates as a branch of the Union Pacific Railroad a railroad and telegraph line, from a point connecting with the Missouri Pacific Railroad, in Kansas City, in Missouri, thence from the Missouri River, at the mouth of the Kansas River, on the south side thereof, with a spur from Wyandotte, in the State of Kansas, being from the East State line of Kansas to Denver, 639 miles in length, with a branch from a point on the main line near Lawrence, to Leavenworth, thirty-four miles in length, in said State of Kansas, connecting at Denver, with the Denver Pacific Railway, and is entitled to extend said railroad to the western boundary of the former Territory of Kansas, to locate and construct branches of said railroad in the counties of the former Territory of Kansas, adjacent to the line of said railroad, as then located and defined by law; and

Whereas, The Denver Racific Railway and Telegraph Company, under and by virtue of the said Acts of Congress and of an Act of Congress approved March 3d, 1869, entitled: "An act to authorize the transfer of lands granted to the Union Pacific Railway Company, Eastern Division, between Denver and the point of connection with the Union Pacific Railroad, to the Denver Pacific Railway and Telegraph Company, and to expedite the completion of railroads to Denver, in the Territory of Colorado:" and of an Act of Congress approved June 20th, 1874, which, among other things, enacts that for all the

purposes of the said Act of July 1st, 1862, and of the acts amendatory thereof;

"The Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific Railroad to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the Act of March 3d, 1859, 'whereby, and by force whereof, the said Denver Pacific Railway and Telegraph Company is likewise entitled to participate in the benefits of the aforementioned Acts of Congress of July 1st, 1862, and July 2d, 1864, and the various acts amendatory thereof, and supplemental thereto, and relating to the Pacific system of railroads, all of which, whether parlicularly herein described or not, are, for greater certainty in this behalf referred to and made part hereof; and,

Whereas, The said Denver Pacific Railway and Telegraph Company, owns a line of road, one hundred and six miles in length, extending from Denver where it connects with the said Kansas Pacific Railway, to Cheyenne, where it connects with the Union Pacific Railroad; and

Whereas, In the aforesaid legislation of Congress, applicable to the above mentioned three railroad companies, it is provided that they may unite and consolidate their respective organizations; and,

Whereas, Each of the said above mentioned three companies, by corporate action duly and severally had, have resolved, pursuant to the authority in that behalf vested in them by law, to unite and consolidate their respective organizations into one company, and have severally agreed to and with each other upon the terms of such union and consolidation, being the terms herein embodied and expressed;

Now this Agreement of Union and Consolidation, made this, the twenty-fourth day of January A. D., 1880, between the said Union Pacific Railroad Company, party of the first part, the said Kansas Pacific Railway Company, party of the second part, and the said Denver Pacific Railway and Telegraph Company, party of the third part,

Witnesseth, that the said parties have respectively agreed, and do hereby severally agree to and with each other, upon the following articles of Union and Consolida-

tion of their respective organizations into one company viz:

Article I. The said Union Pacific Railroad Company, the said Kansas Pacific Railway Company, and the said Denver Pacific Railway and Telegraph Company, in consideration of the premises, do hereby severally agree to and with each other to unite and consolidate, and do hereby unite, form and consolidate their respective organizations, properties and companies into one consolidated company, which shall succeed to, possess and be entitled to receive from the Government of the United States all and singular the grants, benefits, immunities, guarantees, acts and things to be done and performed, and be subject to the same terms, conditions, restrictions and requirements which the aforesaid three companies, respectively, at the date of this consolidation, are, or may be, entitled or subject to under the Acts of Congress in that behalf, in place and substitution of said constituent companies, so consolidated, respectively; and the said consolidated company assumes to and for itself all of the provisions of said Acts of Congress, so far as applicable, relating or in any manner appertaining to said constituent companies or either of them, including the power to sue and be sued in all courts of law and equity within the United States, whether Federal or State, and the right of corporations organized under a law of the United States to remove causes from State to Federal Courts; and all of the provisions of the aforementioned Acts of Congress, and each of them, so far as in their nature applicable to the company hereby formed, shall apply thereto, it being the intent of the parties hereto and of these Articles of Union and Consolidation to organize the company hereby formed under the said Acts of Congress, and to make the said Acts of Congress the charter or constituent acts of this company as fully as if the same were incorporated herein at large.

Art. II. The name of the consolidated company hereby formed shall be

THE UNION PACIFIC RAILWAY COMPANY.

Art. III. The capital stock of the said Union Pacific Railway Company shall be fifty millions seven hundred and sixty-two thousand three hundred dollars ($50,-

762.300) (being the total aggregate amount of the outstanding stock of the three constituent companies), which shall be divided into shares of one hundred dollars each, and it shall be issued in lieu of the stock of the said constituent companies on the surrender thereof, for that purpose, by the respective holders thereof.

Every stockholder in the Denver Pacific Railway and Telegraph Company and in the Union Pacific Railroad Company shall receive in place of every share of one hundred dollars surrendered, a share of one hundred dollars in the new company, and every stockholder in the Kansas Pacific Railway Company, the shares in which are only fifty dollars ($50) each, shall receive, in place of every two shares of the stock at the time held by such stockholder in such company, a share of the capital stock of the new corporation, upon surrendering to the new corporation the certificates of stock held by such stockholder.

Art. IV. The said new corporation shall, without unnecessary delay, issue certificates of stock, in such form as may by the board of directors be deemed advisable, and such board shall provide and adopt such rules and regulations as may be necessary and proper for the issuing and transfer of shares of stock of the said new corporation.

Art. V. The directors of the said Union Pacific Railway Company, to be elected by the stockholders at the annual meetings herein provided for, shall be fifteen in number, each of whom must be the bona fide owner of at least fifty shares of stock in the consolidated company. Such directors shall be chosen annually by a majority of the votes of the stockholders voting in person or by proxy at such election. And they shall continue to be directors until others are elected and qualified in their places. No person shall be a director unless he shall be qualified to vote for directors at the election at which he shall be chosen; and vacancies in the board of directors may be filled by the remaining directors at any regular meeting of the board.

The directors of said company shall, annually, as soon as may be after their election elect from their own number a president and vice-president, and shall also elect a treasurer and secretary.

Art. VI. The following named persons shall be the first directors of said corporation, viz:

Fred L. Ames.
Ezra H. Baker.
Elisha Atkins.
F. Gordon Dexter.
Sidney Dillon.
Russell Sage.
Jay Gould.
Solon Humphreys.
David Dows.
William L. Scott.
Silas H. H. Clark.
Thomas T. Eckert.
John Sharp.
Grenville M. Dodge.
Carlos S. Greeley.

The following named persons shall be the first officers of the said corporation, viz;

President, Sidney Dillon.
Vice-President, Elisha Atkins.
Treasurer and Secretary, Henry McFarland.

The said directors and officers shall continue in office until their successors are chosen, as provided in these articles.

Art. VII. Until otherwise duly provided, the annual meetings of the stockholders of the Union Pacific Railway Company shall be held at the company's office, in the City of New York, on the first Wednesday following the fourth day in March in each year, between the hours of 10 o'clock A. M. and 4 o'clock P. M. of said day.

Notice of such meeting shall be given as may be prescribed by the by-laws.

These provisions may be changed by the stockholders of consolidated company at any annual meeting of the said stockholders.

Art. VIII. The parties hereto of the first and second and third parts hereby assign, transfer, set over and convey, unto the said Union Pacific Railway Company, the consolidated corporation hereby formed, all the rights, privileges, exemptions, and franchises of each of said companies, parties hereto and all the property, real, personal and mixed, and all choses in action, debts, on whatever account, of, owing, or belonging to either of said companies, and all claims, demands, property, rights of way, leases, lease-hold interests, branches, iron rails, rolling stock, tools and implements, and property of every description, name and nature, belonging to either of the said companies, with the appurtenances, to be held, owned and controlled by the said consolidated corporation, its suc-

cessors and assigns, as fully and completely, to all intents and purposes, as the respective parties thereto do or can now own, hold, use, enjoy or control the same; and the parties hereto agree to execute and deliver to said consolidated corporation instruments of transfer or assignments, or other instruments proper or necessary to carry out the covenants, conditions and provisions of this agreement.

This assignment, transfer, sale, and conveyance is made to the said consolidated corporation subject to all liens, charges, and equities pertaining thereto.

Art. IX. Nothing in this agreement contained shall affect or prejudice any rights otherwise existing of the consolidated company to make such further increase of stock or bonds as said consolidated company may by law be entitled to make, or restrict the amount of stock or bonds which such consolidated company is by law authorized to issue or make.

Nor shall anything herein contained affect or impair the right to issue all unissued bonds under the Kansas Pacific Consolidated Mortgage of date May 1st, 1879 wherein Jay Gould and Russell Sage are Trustees; but such unissued bonds may, notwithstanding this consolidation, be issued in the same manner and with the same effect in all respects as if these articles had not been adopted and executed.

And it is expressly agreed that the stockholders of the consolidated company shall have all the powers which would have been possessed by the stockholders of each constituent company if this consolidation had not been effected to ratify, approve and carry out any contracts made by either constituent company, and requiring the ratification or approval of its stockholders.

The power of the Union Pacific Railroad Company to issue all unissued bonds under the mortgage of July 1st, 1879, wherein the Union Trust Company as Trustee, is fully and completely reserved.

Art. X. The new company hereby formed does not herein assume any separate or individual liability for the outstanding debts, obligations, and liabilities of the respective constituent companies, whose several and separate existence as to third parties shall, as respects such debts, obligations and liabilities of every kind and nature, still continue, notwithstanding these Articles of Union

and Consolidation. But nothing herein contained shall prevent any valid debt, obligation or liability of either constituent company from being enforced against the property of the proper constituent company, which by force of these articles becomes the property of the consolidated company.

The corporate existence of the respective constituent companies shall not absolutely cease *eo instanti* on the consummation of the union and consolidation herein provided for, but shall remain and continue so far as necessary to carry out the intent and purpose thereof.

Art. XI. These Articles of Consolidation shall go into effect, and the consolidated company hereby formed, shall come into existence, upon the day on which a copy hereof is filed in the Department of the Interior, as provided in the legislation of Congress in that behalf.

Art. XII. The existing by-laws of the Union Pacific Railroad Company are hereby provisionally adopted, and shall apply to the company hereby formed, until duly changed or repealed.

Art. XIII. All books, vouchers, records, instruments of title, cash, evidence of debt, contracts and documents pertaining to the business or property of the said three companies, parties hereto, shall, without delay, be, delivered to the proper officers of the consolidated company, and the said books, records and papers shall be deemed and taken as far as necessary, as the records and books of said consolidated company; and said books, records, vouchers and papers shall be subject to the proper examination and inspection of all persons interested therein.

Art. XIV. These articles may be amended and modified, from time to time, and in such manner as the holders of two-thirds of the stock of the consolidated company may direct or approve.

Art. XV. This agreement shall be executed on the part of the respective parties hereto, by the proper officers, and under the corporate seals of said companies.

IN WITNESS WHEREOF, the said parties have caused their respective corporate seals to be hereunto affixed, and the same to be attested by their respective Presidents and Secretaries, this the twenty-fourth day of January, 1880.

The Union Pacific Railroad Company,

[SEAL] By Sidney Dillon,
President.

Attest: Henry McFarland,
[SEAL] Secretary.

The Kansas Pacific Railway Company,
[SEAL] By Sidney Dillon,
President.

Attest: A. H. Calef,
[SEAL] Secretary.

The Denver Pacific Railway & Telegraph Company,
[SEAL] By D. M. Edgerton,
President.

Attest: D. H. Moffat, Jr.,
[SEAL] Acting Secretary.

The Union Pacific Railway Company has signified and hereby signifies its assent to and acceptance of the foregoing Articles of Union and Consolidation, January 24, 1880.

The Union Pacific Railway Company,
[SEAL] By Sidney Dillon,
President.

JUDGE MCHUGH: Complainant now offers in evidence the Assignment of Bid by Louis Fitzgerald and Alvin W. Krech, purchasing trustees, dated the 17th day of January, 1898, the same being the assignment of their bid and purchase of the Union Pacific Railway Company property under the foreclosure suits mentioned in said bid, it being admitted that the Assignment as offered is the original Assignment.

MR. BALDWIN: Defendant objects to the introduction of the Assignment as offered above, for the reason that the same is incompetent, irrelevant and immaterial.

The Assignment, as above offered, is here read in evidence, and is as follows:

ASSIGNMENT OF BID.

KNOW ALL MEN BY THESE PRESENTS, That

Whereas, in a certain cause pending in the Circuit Court of the United States for the District of Nebraska, in which the United States of America are complainants and the Union Pacific Railway Company, S. H. H. Clark,

Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert and John W. Doane, Receivers; F. Gordon Dexter and Oliver Ames, Trustees; Union Trust Company of New York, Trustee; J. Pierpont Morgan and Edwin F. Atkins, Trustee, and the Central Trust Company of New York, Trustee, are defendants, a certain decree of foreclosure and sale was entered by the said Court on the 29th day of July, 1897; and

Whereas, in certain causes ancillary thereto and pending between the same parties in the Circuit Courts of the United States for the Districts of Colorado, Wyoming, Utah and the Southern District of Iowa, certain decrees were entered by said Courts on the following dates respectively to-wit, in the Circuit Court of the United States for the Southern District of Iowa, on the 29th day of July, 1897; in the Circuit Court of the United States for the District of Colorado, on the 31st day of July, 1897; in the Circuit Court of the United States for the District of Wyoming, on the 31st day of July, 1897; and in the Circuit Court of the United States for the District of Utah, on the 2d day of August, 1897; by each of which said decrees it was, among other things, adjudged and decreed that the decree rendered in said cause by the United States Circuit Court, for the District of Nebraska, be rendered and pronounced as the decree of the said Courts respectively in said ancilliary causes and should be executed upon the terms and conditions therein prescribed and that the execution of said decree rendered by said Circuit Court of the United States, for the District of Nebraska, according to its terms and conditions should be deemed and held to be the execution of the decrees of the said Court in said ancillary causes in all respects whatsoever; and

Whereas, by said decrees it was, among other things, adjudged and decreed that the said The Union Pacific Railway Company pay, or cause to be paid within twenty days after the entry of said decrees into the Treasury of the United States of America the amount in said decrees found to be due and owing to said United States of America, and that in default of such payment within said time all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging and also the estate and property of every kind and description embraced in and covered by the Subsidy Mort-

gage and Lien of the United States should be sold, as in said decrees directed, as an entirety and in one parcel by William D. Cornish, the Special Master, appointed by said decrees, at public auction, to the highest bidder or bidders upon the mortgaged premises, at the freight station of The Union Pacific Railway Company, in the City of Omaha, in the State of Nebraska, on a day or days to be fixed by the said Special Master, after giving notice of said sale as in said decrees specified; and

Whereas, neither the said The Union Pacific Railway Company, nor any one for its account, nor any defendant in any of the said causes above mentioned made payment of the sum decreed as aforesaid or any part thereof within the time aforesaid, or at any other time; and

Whereas, the said Special Master in pursuance of said decrees, due notice having been given as therein prescribed and according to law, did duly sell at public auction upon the mortgaged premises at the freight station of The Union Pacific Railway Company in the City of Omaha, in the State of Nebraska, on the 1st day of November, 1897, all and singular all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description embraced in and covered by the said Subsidy Mortgage and Lien of the United States (being all the premises, railroad and property of every kind and description mentioned in said decrees except the bonds in the United States-Union Pacific Sinking Fund) to Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, for the sum of $39,883,281.67, said Louis Fitzgerald and Alvin W. Krech being the highest and best bidders for said property at said sale, and having duly and seasonably qualified as bidders at said sale as required by said decree in that behalf; and

Whereas, the said Special Master did duly make and file his report of said sale in the said several courts; which said report and the sale therein reported have been, upon due notice, by orders of said several courts, duly confirmed; and

Whereas, the said Louis Fitzgerald and Alvin W. Krech have in all respects to the date of these presents complied with the provisions of said decrees of foreclosure and sale and have completed the payment of the purchase

price as required by said decrees and orders confirming said sale; and

Whereas, in said decrees it is among other things provided that upon payment of the purchase price by the purchaser or purchasers of said property the said Special Master appointed by said decrees shall execute and deliver a good and sufficient deed conveying all the said railroad telegraph, rolling stock and property of every kind and description in said decrees ordered to be sold, subject to the prior liens and exceptions in said decrees found, together with all the franchises, rights, functions, immunities and appurtenances belonging to the said premises, to the purchasers or their successors and assigns: and

Whereas, the Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, is desirous of acquiring, and is authorized to acquire the said bid or contract of purchase of said Louis Fitzgerald and Alvin W. Krech, and all their rights thereunder, including their right to receive a deed or deeds pursuant to the said decrees for the property, railroad and premises purchased by the said Louis Fitzgerald and Alvin W. Krech at the said sale; and the said Railroad Company has made, and has agreed to make, payment and provision for the payment for said property satisfactory to said Louis Fitzgerald and Alvin W. Krech, and has agreed to perform and assume all of the obligations required by said decrees and orders to be performed and assumed by said Louis Fitzgerald and Alvin W. Krech by reason of their said bid and purchase at said sale;

Now Therefore these Presents Witness:

That the undersigned Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, in consideration of the premises, and of other good and valuable considerations, have sold, assigned, transferred and set over and hereby do sell, assign, transfer and set over unto said Union Pacific Railroad Company, its successors and assigns, their said bid and their right to receive conveyance of the said railroad, franchises and property so purchased by them and all their other rights under said decrees or by virtue of their said bid and purchase in and to said premises, being all the railroad, rolling stock, telegraph, franchises,

rights, functions, immunities and appurtenances to the same belonging and also the estate and property of every kind and description embraced in and covered by the said Subsidy Mortgage and Lien of the United States (being all the premises, railroad and property of every kind and description mentioned in said decrees except the bonds in the United States-Union Pacific Sinking Fund);

To Have and to Hold, the same unto the said Union Pacific Railroad Company, its successors and assigns, to its and their own use forever, subject, however, to all the conditions, restrictions and reservations in said decrees set forth and subject, further, to the performance, in the manner set forth in said decrees, by the said Union Pacific Railroad Company of all the acts and things required by said decrees to be performed by the said purchasers at said sale and now remaining unperformed, and said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, do hereby direct and request that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers at said sale, or his or their successors or assigns, conveying and releasing said property as in said decrees provided, be made and delivered to said Union Pacific Railroad Company, its successors and assigns.

And These Presents Further Witness, that Union Pacific Railroad Company hereby accepts the foregoing assignment, and covenants and agrees to pay, satisfy and discharge, and to indemnify and forever hold harmless said Louis Fitzgerald and Alvin W. Krech, their executors and administrators from and against any, and all losses, damages, expenses and liabilities whatsoever which may have been incurred, or hereafter may be incurred, by said Louis Fitzgerald and Alvin W. Krech or either of them by reason of their said bid and the acceptance thereof, or by reason of any acts and things required by said decrees or said orders confirming said sale to be performed by said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees.

Ten originals of this instrument have been executed, each of which shall be deemed an original and all collectively as one instrument.

In Witness Whereof, the undersigned, Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have hereunto set their hands and affixed their seals, and Union

Pacific Railroad Company has caused these presents to be executed by its President and its corporate seal to be hereto affixed, attested by its Secretary, this 17th day of January, 1898.

Louis Fitzgerald [SEAL]
Alvin W. Krech [SEAL]
Purchasing Trustees.

In the presence of:
G. V. Turner,
Walter S. Wilson,
Union Pacific Railroad Company
[SEAL] By Horace G. Burt,
President.

Attest: Alex. Millar,

JUDGE MCHUGH: Complainant now offers in evidence the Deed under decree foreclosing First Mortgage of The Union Pacific Railroad Company, dated January 22, 1898, signed by William D. Cornish, Special Master, and others, it being admitted that the instrument as offered is the original deed, as stated.

MR. BALDWIN: Defendant objects to the introduction of the deed, as offered, for the reason that the same is incompetent, irrelevant and immaterial.

The deed, as offered, being read in evidence, is as follows:

WILLIAM D. CORNISH, SPECIAL MASTER,
and others,
to
UNION PACIFIC RAILROAD COMPANY.
DEED.

Under Decree Foreclosure First Mortgage of The Union Pacific Railroad Company.
Dated January 22, 1898.

INDENTURE, made the 22nd day of January A. D., 1898, between,

William D. Cornish of St. Paul, Minnesota, as Special Master appointed by the decrees entered in the causes hereinafter mentioned by the Circuit Courts of the United States for the District of Nebraska, the Southern District of Iowa, the District of Wyoming, the District of Colorado and the District of Utah—party of the first part;

Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers of the property of The Union Pacific Railway Company, appointed by the said Circuit Courts of the United States in the causes hereinafter mentioned—parties of the second part;

F. Gordon Dexter and Oliver Ames, as Trustees under the mortgage or deed of trust hereinafter mentioned executed by The Union Pacific Railroad Company and bearing date the first day of November, 1865, parties of the third part;

The Union Pacific Railway Company, a corporation formed by the consolidation of said The Union Pacific Railroad Company, with the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, party of the fourth part;

Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, both of the City of New York, parties of the fifth part; and

Union Pacific Railroad Company, being a new corporation or body politic and corporate organized and existing under and pursuant to the laws of the State of Utah, party of the sixth part;

Whereas, The Union Pacific Railroad Company, a corporation created under and by virtue of the Act of Congress approved July 1, 1862, and the Act of Congress approved July 2, 1864, on or about the 1st day of November, 1865, executed a mortgage or deed of trust (herein called its "First Mortgage") bearing date the first day of November, 1865, whereby it conveyed to Edwin D. Morgan and Oakes Ames, as trustees, and to their successors, all and singular the railroad, telegraph property and franchises in said mortgage described (the same being embraced in the railroad, property and franchises hereinafter described and conveyed), and on or about the 12th day of March, 1868 executed a supplemental indenture to said trustees, which First Mortgage and supplemental indenture were executed to said trustees to secure certain bonds of said The Union Pacific Railroad Company (herein called its "First Mortgage Bonds"), of which there were issued and outstanding on the 29th day of July, 1897, bonds to the aggregate amount of $27,229,000 principal; and

WHEREAS, F. Gordon Dexter and Oliver Ames, the-
rties of the third part to this indenture, were duly ap-
inted substituted trustees under the said First Mort-
ge, and at the time of filing their bill of complaint
reinafter mentioned, were, and now are, the sole substi-
ted trustees under said First Mortgage, and

WHEREAS, on or about the 24th day of January, 1880,
d The Union Pacific Railroad Company, under and
rsuant to Acts of Congress in that behalf, was consoli-
ted with the Kansas Pacific Railway Company and the
nver Pacific Railway and Telegraph Company, and by
ch consolidation said the Union Pacific Railway Com-
ny, party of the fourth part hereto, was formed and
came the successer to said The Union Pacific Railroad
mpany, which executed the First Mortgage aforesaid;
d

WHEREAS, said The Union Pacific Railway Com-
ny, having become insolvent and having made de-
ult in the payment of certain interest which
came due on the first day of July, 1894,
d the first day of January, 1895, on the First
ortgage Bonds secured by said First Mortgage the said
. Gordon Dexter and Oliver Ames, trustees as aforesaid,
led in the Circuit Court of the United States for the Dis-
ict of Nebraska, their bill in equity against The Union
acific Railway Company, the United States of America
nd various other defendants, to foreclose the said First
ortgage, and subsequently filed in said cause their sup-
lemental bill of complaint showing that the said Railway
ompany had made default in the payment of interest
hich fell due and matured on said First Mortgage Bonds
n the first day of July, 1895, on the first day of Janua-
y, 1896, on the first day of July, 1896, on the first day of
anuary, 1897, and on the first day of July, 1897, and that
he said company had also made default in the payment of
he principal of certain of the bonds secured by said First
ortgage, and such proceedings were thereupon had in the
aid cause that, on the 29th day of July, 1897, a certain
decree of foreclosure and sale was entered by said Circuit
ourt of the United States for the District of Nebraska,
herein and whereby it was adjudged and decreed that
aid The Union Pacific Railway Company pay, or cause to
e paid within twenty days after the entry of said decree,

certain amounts therein found to be due under the said First Mortgage, and that in default of such payment by said The Union Pacific Railway Company, or by some one claiming under it or by some one for its account, or by some of the defendants in the said cause within the time aforesaid, the said mortgaged premises, property and franchises should be sold as provided in the said decree; and

WHEREAS, similar and ancillary causes were pending between the same parties in the Circuit Courts of the United States for the Southern District of Iowa, the District of Wyoming, the District of Colorado, and the District of Utah, in each of which Districts portions of the mortgaged premises property and franchises were situate; and said decree entered by the Circuit Court of the United States for the District of Nebraska on the 29th day of July, 1897, was adopted, rendered and announced as the decree of each of said other courts in said similar and auxiliary causes therein pending, by decrees entered by such courts respectively on the following dates, viz, by said Circuit Court of the United States for the Southern District of Iowa, on the 29th day of July, 1897; by said Circuit Court of the United States for the District of Wyoming, and said Circuit Court of the United States for the District of Colorado, on the 31st day of July, 1897, and by said Circuit Court of the United States for the District of Utah, on the 2d day of August, 1897—to which said several suits and to the proceedings and record thereof in each of the said Courts including said Circuit Court of the United States for the District of Nebraska, reference is hereby made; and

WHEREAS, neither the Union Pacific Railway Company nor anyone claiming under it nor any one for its account, nor any of the defendants in either of the said causes above mentioned within the time fixed in each of the said decrees, or at any other time made payment of the sums decreed as aforesaid, or any part thereof; and

WHEREAS, by the decree and order of the Circuit Court of the United States for the District of Nebraska in said cause therein pending S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, the parties hereto of the second part, were appointed receivers of the railroad, property and effects of The Union Pacific Railway Company, party of the fourth

part hereto; and in and by decrees entered by said United States Circuit Courts for the Southern District of Iowa and the Districts of Wyoming, Colorado and Utah, respectively, in said ancillary causes therein pending the said parties of the second part hereto were appointed receivers of the railroad, property and effects of said The Union Pacific Railway Company for and within the territory and jurisdiction of said courts respectively, with the powers, responsibilities and duties conferred upon them by said decree and order entered by said Circuit Court of the United States for the District of Nebraska appointing such receivers; and

WHEREAS, William D. Cornish, the party of the first part hereto, was, in and by the said decree of the Circuit Court of the United States for the District of Nebraska, and in and by said ancillary degrees of the United States Circuit Court in and for each of the said other districts, appointed Special Master to execute said decrees and make the sale therein provided to be made, and to execute and deliver deeds of conveyance to the purchaser or purchasers thereof upon confirmation of such sale and payment of the purchase price thereof as in said decree provided; and

WHEREAS, said William D. Cornish, Special Master as aforesaid, gave due public notice, in pursance of said decrees and according to law, of the time and place of the sale under said decrees and of the manner and terms upon which such sale was to be conducted, and duly complied with all the provisions of said decrees relating to such sale; and in pursuance of the said decrees, at the place specified therein, to-wit: upon the mortgaged premises, at the freight station of The Union Pacific Railway Company in the City of Omaha, in the State of Nebraska, did on the 2d day of November, 1897, duly sell at public auction to Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, the parties of the fifth part to this indenture, they being the highest and best bidders at said sale, all and singular the railroad, telegraph, franchises, rights, function, immunities and appurtenauces to the same belonging, rolling stock and property of every kind and description, in the said decrees mentioned and directed to be sold, at and for the sum of fifty million, six hundred and thirty-seven thousand, four hundred and thirty-five dollars ($50,637,435) and

WHEREAS, afterwards, William D. Cornish, Special Master as aforesaid, did duly make and file his report of said sale to the said several courts, and by decrees entered by said several Circuit Courts of the United States in said causes therein pending respectively, the said report of sale was in all things ratified, approved and confirmed, and the sales therein reported made absolute, subject to all the terms and conditions of said several decrees of foreclosure and sale and to the due performance by the purchasers or their successors or assigns of all the obligations therein prescribed; and

WHEREAS, said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, the parties of the fifth part hereto have in all respects complied with the provisions of the said decrees of foreclosure and sale and have paid and made settlement of the purchase price as provided in said decrees and the orders of said Courts; and

WHEREAS, said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have duly sold, assigned, transferred and set over to Union Pacific Railroad Company, the party of the sixth part to this Indenture, their said bid and their right to receive conveyance of the railroad, franchises and other property purchased and all their other rights under the said decrees and by virtue of their bid and purchase at said sale;

NOW THEREFORE, THIS INDENTURE WITNESSETH, that the said WILLIAM D. CORNISH, Special Master as aforesaid, party of the first part to these Presents, in order to carry into effect the sale made by him as aforesaid, and in pursuance of the aforesaid decrees, and in conformity to law, and in consideration of the premises, and of the payment and settlement as aforesaid of the said purchase price of the said property as provided in that behalf in the said decrees, and orders of said courts, has granted, bargained, sold, assigned, released, conveyed and confirmed, and by these presents, does grant, bargain, sell, assign, release, convey and confirm unto the said UNION PACIFIC RAILROAD COMPANY, the party of the sixth part hereto, and to its successors and assigns, in fee simple forever, all and singular all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock and property of every kind and description mentioned in the said decrees and embraced in and

vered by the said First Mortgage of November 1, 1865, d all the property sold or directed by the said decrees be sold, the same being described as follows:

All the railroad, right of way, and railroad property The Union Pacific Railway Company extending from the stern terminus of the Union Pacific Railway on the east ne of the said Railway Company's property between welfth Avenue and Thirteenth Avenue in Council Bluffs, wa, in a westerly direction to Twentieth Street in maha, Nebraska, including the railroad and railroad ridge across the Missouri River, and extending from the itial point of construction of the Union Pacific Railroad ear the northeast corner of and within section 10, Township 15, range 13 east of the 6th principal meridian in maha, Nebraska, in a southerly and westerly direction hrough the City of Omaha to Twentieth Street in said City f Omaha at a junction with that part of said railroad rom Council Bluffs aforesaid, and extending thence in a esterly direction through the counties of Douglas, Sarpy, odge, Colfax, Platte, Merrick, Hall, Buffalo, Dawson, incoln, Keith, Deuel, Cheyenne and Kimball in the State f Nebraska, and Sedgwick County in the State of Colorado, and the Counties of Laramie, Albany, Carbon, Sweetwater and Uintah in the State of Wyoming, and the Counties of Summit, Morgan, David and Weber in the State of Utah, to a junction with the Central Pacific Railroad at a point five miles west of Ogden in the State of Utah, a distance of 1,042.41 miles of main line railroad; and also the rights of way, railroads and railroad tracks constituting spurs or branch lines of railroad extending from points of junction with the said main lines (1) at a point about .6 of a mile west of what is known as Transfer Depot at Council Bluffs, in a northeasterly direction to what is known as the Broadway Depot in said city, a distance of 1.72 miles in the City of Council Bluffs; (2) at Almy Junction, Wyoming, in a northerly direction to a terminus at Mine No. Seven, a distance of 3.88 miles; (3) at Cheyenne, Wyoming, in a northwesterly direction to a connection with the track of the Union Pacific, Denver and Gulf railway, a distance of 2.04 miles; (4) at a point on said main line in Omaha, Nebraska, northerly and easterly, a distance of 18,000 feet to certain ice-houses and industries on what is known as Cut-

Off Lake; also lots, yards, terminal grounds, shop grounds, streets and alleys, lands and tracts of land, tenements and hereditaments, easements and rights of way, owned or acquired or appropriated by or for The Union Pacific Railroad Company, The Union Pacific Railway Company, or the Receivers of the property of said last named Company for the purposes of said lines of railroad, including all lands so acquired or appropriated the title to which stands in the names of trustees for said The Union Pacific Railway Company; and also all lands acquired for or used for stations or for terminal purposes, and also all rights and estates, legal and equitable, of The Union Pacific Railway Company in and to all stations and depots, and in and to all union depots upon or connected with the line of its said railway or used in connection therewith, and including all the lands and other property described in the reports of the Special Master, filed in said several causes respectively and referred to in said decrees, and in the schedules in said reports contained and therein numbered 1, 2, 3, 4 and 5, hereby referred to and made part hereof, all the said property being property owned, acquired, or appropriated and necessary to the use and operation of the said railroad; also the shops, freight depots, general office building, roundhouses, depots, engine houses, car houses, station houses, machine shops, work-shops, rails, switches, turnouts, spurs, side tracks, sidings and other structures and facilities upon said mortgaged premises, constructed, acquired or owned for the purposes of or in connection with said lines of railway; also the lands, interests and easements in lands, pipes, pump-houses, structures, pipe lines, appliances, facilities and easements of said company pertaining to the water supply upon or along said lines of railroad, and the tools, appliances, fixtures, materials and supplies owned or acquired for the purposes thereof; also the locomotives, passenger cars, Pullman Sleeping cars, dining cars, freight cars and other cars, and all other equipment and rolling stock owned by The Union Pacific Railway Company, and all interest of said The Union Pacific Railway Company in any other equipment or rolling stock, to the extent that said equipment and rolling stock so owned, or in which the said railway company has any interest, was acquired or provided for or by said railway company for the purpose of

said railroad and mortgaged premises, or is necessary for the running and operation thereof, the same being the undivided 70 per cent of all the rolling stock or equipment owned by The Union Pacific Railway Company, or in which said company has any interest: also all the lines of telegraph, telegraph material, instruments, fixtures and appliances belonging to the said railway company and located upon or used in connection with said mortgaged premises; also all furniture, fixtures, appliances, apparatus, supplies and material owned, acquired or provided by said company for use in connection with said railroad and mortgaged premises, located in the various offices of said railway company upon or remote from said railroad, including the offices of said company in the cities of Omaha, Nebraska, and Boston, Massachusetts, and also all the property of said The Union Pacific Railway Company, and all its rights and interests in and to property of every kind and nature, whether of the character herein described or otherwise, and also all the corporate rights and franchises of said The Union Pacific Railroad Company and its successor, The Union Pacific Railway Company, so far as such property, rights, interests and franchises pertain to the said railroad, telegraph and mortgaged premises; also all the moneys, credits and property not herein otherwise specified, in the possession of or under the control of the said Receivers in said causes, or to which said Receivers are or may be entitled, which have been or may be derived by said Receivers from or on account of said mortgaged premises, or from the sale or other disposition of any of said mortgaged property, or from the operation of said mortgaged premises by said Receivers, subject to the charges of the Receivers as specified in said decrees in respect thereof; said lands above referred to as standing in the names of trustees for the said The Union Pacific Railway Company and which are herein and hereby conveyed unto the party of the sixth part hereto, being described as follows:

POTTAWATTAMIE COUNTY, IOWA.

| Description. | Acres. |
|---|---|
| Commencing at a point 471.5 ft. South of the northeast corner of the N. W. ¼ of S. E. ¼ of Sec. 34, T. 75 N. R. 44 W. of the 5th P. M.; thence (taking | |

| Description. | Acres. |
|---|---|
| the 40 acre line for due north & South line) S. 57 deg. 31′ W. 369.23 ft; thence West to a point 676.5 ft. south and 329.34 ft. east of the centre of said Sec. 34; thence South parallel with the north and south centre line of said Sec. 34, 660 ft. to a point in the present North Right of Way line of the Union Pacific Ry. Co., thence East on said R. O. W. line 913.16 ft; thence Northeasterly 89 ft. to a point in 40 acre line 60 ft. more or less North of the S. E. corner of the NW¼ of SE¼ of said Sec. 34; thence North on said 40 acre line 795.3 feet to the place of beginning, containing an area of..... | 15.42 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| A tract in the N. E. ¼ of S. E. ¼ of Sec. 34, T. 75 N. R. 44 W. of 5th P. M., of Iowa, decribed as follows: Commencing at a point 185.3 ft. South from the east quarter section corner of said Sec. 34, running thence south on Section line 389.2 ft or to grounds as now owned by the Union Pac. Railway Co; thence Southwesterly on Northerly line of said ground 1484 feet to West line of said NE¼ of SE¼; thence north on said line 1080 ft; thence E 1323 feet or to place of beginning. Except tract sold to S. H. Finney, described as follows: Commencing at a point 537 feet south from the East ¼ Section corner of said Sec. 34 and running thence south 39½ ft. to Union Pacific Ry. grounds; thence southwesterly on northerly line of said grounds 270¾ feet; thence N. 30 deg. W. 188¾ ft; thence east 335 ft. to place of beginning, Containing 0.737 of an acre... | 21.56 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| SW¼ of NE¼ and NW¼ of Sec. 2 and all Sec. 3, all in Township 74, Range 44 West..... | 791.10 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| A tract of land in the NE¼ of SE¼ Sec. 34 T. 75 N. R. 44 W. in Pottawattamie Co., Iowa, described as follows; Commencing at a point 537 ft. south from the East ¼ Section corner of said section 34, and running thence south 39½ feet to the U. P. Ry. ground; thence southwesterly on northerly line of said | |

| Description. | Acres. |
|---|---|
| grounds 270¾ feet; thence north 30 deg. West 188¾ ft; thence East 335 feet to place of beginning, containing an area of..... | 0.74 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| The East 44 feet of Lot 1; the East 44 feet and the west 22 feet of Lot 2, and all of lots 3 & 5, all in Block 9 in Grimes Addition to Council Bluffs..... | 0.66 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Part of Lots 4 and 6 in Block 9 in Grimes Addition to Council Bluffs not in Union Avenue..... | 0.44 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| That portion of Lot 7 in Block 9 in Grimes Addition to the City of Council Bluffs, not taken and used for the Right of Way of "Union Avenue".... | 0.02 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Part of Lots 1, 2, 3, 4 & 5 in Block 13, in Bayliss Addition to Council Bluffs not in Union Avenue.. | 0.57 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| An undivided half of Lots 1, 2 & 3 in Block 11 in the Sub-division of Riddle Tract in the City of Council Bluffs. All the interest of J. S. Casement, Mary Lockwood Casement, Robert L. Casement, Grey Casement and Daniel Wells Casement in and to Lots 1, 2 & 3 in Block 11 in Riddle's Sub-division of the City of Council Bluffs, Iowa. ..... | 0.36 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All the north 35½ feet of Lot 14 and all of Lots 15 & 16 in Block 11; all in the Sub-division of the Riddle tract, City of Council Bluffs..... | 0.32 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 17 in Block 11 in Sub-division of the Riddle tract, City of Council Bluffs.. ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot No. 18 in Block 11 in Sub-division of Riddle tract, City of Council Bluffs..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| All of Lot 19 in Block 11 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 20 in Block 11 in the Sub-division of the Riddle tract in the City of Council Bluffs..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 1, 2, 9 & 10 in Block 12; also the north 22⅔ ft. of Lot 3 in Block 12 and the North 22⅔ ft. of Lot 11 in Block 12, and the North 113⅓ ft of Lot 8 in Blk 12; all in the Sub-division of the Riddle tract of Council Bluffs..... | 0.70 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 1 in Block 33 in the Sub-division of the Riddle tract in the City of Council Bluffs. All of Lot No. 2 in Block No. 33 in Sub-division of The Riddle tract, City of Council Bluffs..... | 0.25 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 3 in Block 33 in Sub-division of the Riddle tract in the City of Council Bluffs. All of Lot 12 in Block 33, Riddle's Sub-division of the City of Council Bluffs..... | 0.25 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 13 and 14 in Block 33 in Sub-division of Riddle tract, City of Council Bluffs..... | 0.25 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 15, Block 33 in the Sub-division of Riddle tract, City of Council Bluffs. All Lot 16 in Block 33 in the Sub-division of the Riddle tract in the City of Counil Bluffs..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 1 in Block 34 in Sub-division of the Riddle tract, City of Council Bluffs. Lot 2 and 3 in Block 34 in the Sub-division of the Riddle tract, in the City of Council Bluffs..... | 0.37 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| All of Lots 12, 13 & 14 in Block 34 in Sub-division of Riddle tract, City of Council Bluffs..... ATKINS, BAKER & MCFARLAND, TRUSTEES, | 0.38 |
| Lot 15 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.10 |
| All Lot 16 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.10 |
| All of Lot 14 in the Block 37 in Sub-division of the Riddle tract, City of Council Bluffs..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.13 |
| All of Lots 1, 2 & 3 in Block 38 in Sub-division of the Riddle tract, City of Council Bluffs..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.37 |
| All Lot 11 in Block 38 in the Sub-division of the Riddle tract in the City of Council Bluffs..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.12 |
| All Lots 12, 13 & 14 in Block 38 in the Sub-division of the Riddle tract in the City of Council Bluffs..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.37 |
| All of Lot 15 in Block 38 in Sub-division of the Riddle tract, City of Council Bluffs. All of Lot 16 in Block 38 in Sub-division of the Riddle tract in the City of Council Bluffs..... DEXTER, ATKINS & LANE, TRUSTEES. | 0.18 |

DOUGLAS COUNTY, NEBRASKA.

CITY OF OMAHA.

| Description. | Acres. |
|---|---|
| Lots 2 and 3 in Block 208 in the City of Omaha, as surveyed and lithographed..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.40 |

| Description. | Acres. |
|---|---|
| Lot 4 in Block 208 in the City of Omaha, as surveyed and platted..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 5 in Block 208 in the City of Omaha, as surveyed and platted..... | 0.20 |
| ATKINS, BAKER & MCFARLAND TRUSTEES. | |
| Lot 6 in Block 208 in the City of Omaha..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 2 in Block 215 in the City of Omaha..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 3 in Block 215 in the City of Omaha..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 4 in Block No. 215 in the City of Omaha, as surveyed and platted..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Part of Lot 2 (being 2.178 sq. ft.) in Block No 226 in the City of Omaha, according to the recorded plat thereof. | |
| ATKINS, DEXTER & LANE, TRUSTEES. | |
| Commencing at a point 346 feet north of the S. E. corner of the S. W. ¼ of the S. W. ¼ of Section 23 in T 15 N of R 13 E of the 6th P. M.; thence east 410 feet; thence south 88 ft.; thence west 240 ft.; thence north 56 ft.; thence west 170 feet; thence north 32 feet to the place of beginning. Containing 26,560 square feet..... | 0.61 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lots 5, 6, & 7 in Block F..... | 0.60 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 1 in Block 178 in the City of Omaha, as surveyed and lithographed..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lots numbers 2 and 3 in Block No. 178 in the City of Omaha..... | 0.40 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| All the following described Real Estate situated in the City of Omaha, County of Douglas and State of Nebraska, to-wit: Lots 5, 6, 7 & 8 in Block 178; Lots 6, 7, & 8 in Block 179 ..... | 1.22 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 5 in Block 179 as surveyed and platted by the Council Bluffs and Nebraska Ferry Co..... ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot No. 5 in Block 180 in the City of Omaha..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot No. 6 and 8 in Block 180 in the City of Omaha. | 0.40 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 4 in Block 181..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| All Lots 1 & 4 in Block 188 in the City of Omaha, Also a parcel of land adjoining said Lot 1 on the east, commencing at the NE corner of said Lot 1 in Block 188 aforesaid; thence south 132 feet to the SE corner of said lot 1; thence east 20 feet; thence North 133 ft; thence west 20 ft. to place of beginning. Containing 2640 square feet..... | 0.46 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lots 2 and 3 in Block 188 in the City of Omaha | 0.40 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lots 1, 2 & 3 Block 189 South of right of way of the U. P. Ry. containing, 1⅛ of a regular City lot..... | 0.32 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All that portion of Lot 4 in Block 189 in the City of Omaha not included in a certain grant for Right of way made to the Union Pacific Railroad Company by deed dated March 3, 1864, and recorded on the 21st day of the same month in Book "P" of deeds at Page 301 of the records of said Douglas County ..... | 0.02 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| Part of Lot 2 (being 6.534 sq. ft.) in Block 226 in the City of Omaha, according to the Recorded Plat thereof..... | |
| Lots 7, 8, 9 & 10 in Block 15 and fractional Block 17 in the Town of Millard..... | 0.33 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lots 7, 8, 9 & 10 in Block 23 in the Town of Waterloo..... | 0.75 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

DODGE COUNTY, NEBRASKA.

| | |
|---|---|
| Lots 1 & 2 in Block C in the City of North Bend Lots 5 in Block 53 in the City of North Bend, except the east 15 of lot..... | 1.42 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

PLATTE COUNTY, NERRASKA.

CITY OF COLUMBUS.

| | | | | Trustees. |
|---|---|---|---|---|
| Lots 3 & 4 in Block | 41.... | 0.40 | Dexter, Atkins & Mink | |
| " 7 " | 58.... | 0.20 | " " " | |
| " 3 & 4 " | 59.... | 0.40 | " " " | |
| " 4 " | 77.... | 0.20 | " " " | |
| " 3 " | 80.... | 0.20 | " " " | |
| " 1 & 2 " | 86.... | 0.40 | " " " | |
| " 8 " | 100.... | 0.20 | " " " | |
| " 5 & 6 " | 101.... | 0.40 | " " " | |
| " 7 " | 102.... | 0.20 | " " " | |
| " 3 & 4 " | 110.... | 0.40 | " " " | |
| " 5 " | 112.... | 0.20 | " " " | |
| " 2 & 7 " | 113.... | 0.40 | " " " | |
| " 7 & 8 " | 121.... | 0.40 | " " " | |
| " 7 " | 125.... | 0.20 | " " " | |
| " 6 " | 145.... | 0.20 | " " " | |
| " 7 " | 159.... | 0.20 | " " " | |
| " 8 " | 168.... | 0.20 | " " " | |
| " 5 " | 187.... | 0.20 | " " " | |
| " 3 & 4 " | 190.... | 0.40 | " " " | |
| " 7 " | 195.... | 0.20 | " " " | |

| | | | | Trustees. |
|---|---|---|---|---|
| Lots 1 | Block 199.... | 0.20 | Dexter, Atkins & Mink | |
| " 1 | " 209.... | 0.20 | " " " | |
| " 6 | " 211.... | 0.20 | " " " | |
| " 7 | " 224.... | 0.20 | " " " | |
| " 1 & 7 | " 225.... | 0.40 | " " " | |
| " 2 | " 229.... | 0.20 | " " " | |
| " 6 | " 231.... | 0.20 | " " " | |
| " 3, 5 & 6 | " 232.... | 0.60 | " " " | |
| " 2 | " 234.... | 0.20 | " " " | |
| " 2 | " 259.... | 0.20 | " " " | |
| Out Lot 7 | " ....11.65 | | " " " | |
| " " 9 | " .... 7.75 | | " " " | |
| SE ¼ of NW ¼ sec. 20 | .... | | " " " | |
| 17—1 W | ....40.00 | | " " " | |

HALL COUNTY, NEBRASKA.

CITY OF GRAND ISLAND.

| | | | | Trustees. |
|---|---|---|---|---|
| Lots 5, 6, 7 & 8, | Block 39.... | 0.80 | Dexter, Atkins & Mink | |
| " 5, 6, 7 & 8 | " 40.... | 0.80 | " " " | |
| " 5, 6, 7 & 8 | " 41.... | 0.80 | " " " | |
| " 3, 4, 5 & 6 | " 42.... | 0.80 | " " " | |

FIRST ADDITION TO GRAND ISLAND.

Frac. Lot 7 in Block 105....0.03 Dexter, Atkins & Mink

BUFFALO COUNTY, NEBRASKA.

KEARNEY JUNCTION.

| | | | Trustees. |
|---|---|---|---|
| Lots 89, 602, 719..... | 0.40 | Dexter, Atkins & Mink | |
| (Park) Lots 1398, 1399, 1400, | | " " " | |
| 1404, 1405, 1406 | 0.90 | " " " | |
| 1477..... | 0.15 | " " " | |

LARAMIE COUNTY, WYOMING.

CITY OF CHEYENNE.

Fractional Lot No. 1 in Block 833. Also lots 1, 2, 3 and frac. Lots 4, 5, 6, 7 & 8 in Block 834. Also lots 1, 2, 3, 4, 5, 6, 7, & 8 in Block 835. All in Section 32, T. 14 N. R. 66 W; Also lots 1, 2, 3, 4,

| Description. | Acres. |
|---|---|
| 5, 6, 7, & 8 in Block 386. Also Lots No. 1, 2, 3, 4, 5, 6, 7 & 8 in Block 837; Also Lots No. 1, 2, 3, 4, 5, 6, 7, & 8 in Block 838; also lots No. 1, 2, 3, 4, 5, 6, 7, & 8 in Block 839—all in Section 32, T. 24, N. R. 66 W, as designated on the official plat of Townsite of said City of Cheyenne..... | 9.86 |

ATKINS, BAKER & MCFARLAND, TRUSTEES.

| | |
|---|---|
| Lot 22 in Block 122. City of Laramie..... | 0.72 |

DEXTER, ATKINS & MINK, TRUSTEES.

Soda Lakes, near Laramie, Wyoming.

| | |
|---|---|
| SW¼ of NW¼ of NE¼ | |
| NW¼ of SW¼ of NE¼ | |
| E½ of NW¼ | Sec. 4 T. 14 N. R. 75 W. |
| S½ of NW¼ of NW¼ | |
| NE¼ of SW¼ of NW¼ | |
| N½ of NW¼ of SW¼ | Sec. 5, T. 14 N. R. 75 W. |
| NE¼ of NE¼ of SE¼ | Sec. 6 T. 14 N. R. 75 W. |
| SE¼ of SE¼ of SW¼ | Sec. 33 T. 15 N. R. 75 W. |
| Also all claim in and to other portions of Sec's 4 & 5, T. 14 N. R. 75–W, and in and to other portion of Sec. 33 T. 15 N. R. 75, which may have been at any time vested in those through whom above property was obtained..... | 200.00 |

DEXTER, ATKINS & MINK, TRUSTEES.

WEBER COUNTY, UTAH.

| | |
|---|---|
| A part of lot 6 in Block 4 in South Ogden, Survey, beginning at the northwest corner of said Lot 6 and running thence south 20 rods; thence east 10 rods; thence north 2½ rods; thence east 10 rods; thence north 2½ rods; thence east 2 rods; thence north 17½ rods; thence west 12 rods to place of beginning... | 1.47 |

ATKINS, DEXTER & LANE, TRUSTEES.

Including also in this conveyance to said party of the sixth part any property and income acquired or received by the Receivers as Receivers in said several causes or any of them through the operation of said mortgaged premises, and any property acquired by the Receivers in the Ames Cause hereinafter mentioned for or appropriated by

them to the use of the railroad and telegraph covered by said First Mortgage or necessary to the said railroad and telegraph line for running and operating the same, together with all the franchises, rights, functions, immunities and appurtenances belonging to said mortgaged premises.

It being the true intent and purpose hereof to convey to the party of the sixth part all property and premises directed by the said decrees to be sold whether the same are in this Indenture particularly described or not, subject however to the charges of the Receivers in respect thereof as set forth in said decrees;

TO HAVE AND TO HOLD all and singular all the above mentioned and described railroad, telegraph, rolling stock, franchises and property of every kind and description hereby conveyed, or intended to be conveyed, unto the said Union Pacific Railroad Company, party of the sixth part hereto, being the corporation organized and existing under and pursuant to the laws of the State of Utah, and to its successors and assigns forever, as fully and absolutely as the party of the first part may or ought by virtue of the said decrees to convey the same; Subject to and saving, however, the right of the Government to have the preference at all times in the use, at fair and reasonable rates of compensation, to be paid to the party of the sixth part, not to exceed the amounts paid by private parties for the same kind of service of said telegraph line and railroad, for the transmission of dispatches over said telegraph line, and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the Government, whenever required by any department thereof;

And subject to and saving the title of The American Loan and Trust Company, as shown by the Equipment Trust Indenture of The Union Pacific Railway Company to the said The American Loan and Trust Company, dated October 1st, 1887, to the extent and so far as the said indenture affects the portion of the equipment therein embraced which is adjudged in said decrees to pertain to said mortgaged premises, and to the extent of the purchase money indebtedness in said decrees found to be outstanding thereunder: And Subject to and Saving the lien of the Omaha Bridge Mortgage of The Union Pacific Rail-

road Company to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as Trustees, dated the first day of April 1871, and the indenture, supplemental thereto, dated the 27th day of September, 1871, and the lien of the Omaha Bridge Renewal Mortgage, executed by The Union Pacific Railway Company to the Central Trust Company of New York, as trustee, dated the first day of October, 1885, upon and in respect of the premises embraced in and covered by said Bridge Mortgages, and to the extent of the indebtedness thereby secured and in said decrees found to be outstanding and unpaid;

And subject also to the further express condition that the party hereto of the sixth part, its successors or assigns, shall, as part consideration and purchase price of the property purchased and herein conveyed and in addition to the sums required by said decrees to be paid, and paid, take the same, and receive this deed therefor upon the express condition that it or its successors or assigns shall, as provided in said decrees, pay, satisfy and discharge the obligations, liabilities and charges in said several decrees, specified as follows:

First. All the proper costs of said causes and of the expenses of the sale, therein decreed, including the compensation and necessary expenses of the Special Master appointed to make the sale.

Second. Any unpaid compensation which has been or shall be allowed to the Receivers in said causes or their solicitors, and any unpaid indebtedness and liability of the Receivers incurred in the management and operation of the mortgaged premises since October 13, 1893, which is either established or unquestioned at the time of the delivery of this Indenture.

Third. The charges, compensation, allowances and disbursements of the Complainants and any of the other parties to said causes, entitled thereto, their solicitors and counsel.

Fourth. A sum equivalent to interest at the rate of six per cent. per annum from the date of said decree, entered by the United States Circuit Court for the District of Nebraska, to a date of payment to be fixed by the Special Master upon the entire amount of First Mortgage bonds which has not been presented by the purchaser on account of his bid.

Fifth: The payment of all First Mortgage coupons and accrued interest on matured First Mortgage bonds unpaid at the date of the entry of said decrees, to the amount of $102,930, as found in article Eighth of said decrees, which shall not have been paid at the time of the delivery of the property to the purchaser.

Sixth. All unpaid indebtedness and obligations, if any such there be, which have been legally contracted or incurred by the Receivers in said causes in the operation, or on account of, the property embraced in said First Mortgage of The Union Pacific Railroad Company at any time before the same shall be delivered to the purchaser or purchasers, and also any such unpaid compensation which has been or shall be allowed by the court to the receivers or their solicitors in the cause in which Oliver Ames, Second, Samuel Carr and others, are complainants, and The Union Pacific Railway Company and others are defendants, pending in said courts, and known as the "Ames Cause" and all such unpaid indebtedness, obligations and liabilities of the said receivers in said Ames cause which shall have been allowed or legally contracted or incurred by the said Receivers in the operation of said property embraced in said First Mortgage, and shall be properly chargeable to said property to the extent of which the revenues and assets in the hands of said Receivers in said Ames cause shall be insufficient to pay and discharge such compensation, indebtedness, obligations and liabilities in said cause.

Seventh. Any indebtedness or liability contracted or incurred by The Union Pacific Railway Company, or by the said Receivers in the said Ames Cause, in the operation of the property covered by and embraced in the said First Mortgage of November 1st, 1865, prior to the appointment of the Receivers in the causes in which Dexter and Ames are complainants, which are prior in lien to said First Mortgage and payment whereof was provided for by order of said Circuit Court for the District of Nebraska, dated January 21st 1895, in said cause, and which shall not, at the time of such delivery of possession, have been paid or satisfied out of the income of the property in the hands of the Receivers, upon the Court adjudging the same to be prior in lien to said First Mortgage, and directing payment thereof; provided that suit be brought for

the enforcement of such indebtedness or liability incurred by said Railway Company or Receivers within the period allowed by the statute of limitations applicable thereto, after such indebtedness or liability was contracted or arose;

And subject, also, to all other terms, conditions and reservations of each of the said several decrees of foreclosure and sale and the several decrees confirming the said sale entered in the United States Circuit Courts for the District of Nebraska, the Southern District of Iowa, the Districts of Wyoming, Colorado and Utah, respectively, whether in this Indenture expressly referred to or not, including the reservation of the said Courts to retake and resell the premises herein conveyed in case the party of the sixth part to this Indenture or its successors or assigns should fail to pay any sum required to be paid under the said decrees within the time specified in said decrees respectively after the entry of an order requiring such payment.

And this Indenture Further Witnesseth: That Whereas in and by the said decrees of foreclosure and sale of the said railroad, franchises, property and premises hereinbefore and in the said decrees described, the said Receivers and the Receivers theretofore appointed in the said Ames Cause were ordered and directed to make and deliver a sufficient deed conveying and assigning to the Purchaser or Purchasers at the said Master's Sale and his or their assigns, all their right, title and interest in, of, or to, any property vested or standing in their names, or to which they have acquired title, as such Receivers, in the management or operation of the premises covered by and embraced in said First Mortgage so far as the same shall be appurtenant to said premises:

Now Therefore the said Receivers as aforesaid parties of the second part hereto, for and in consideration of the premises and of the sums as aforesaid paid by the said purchasers and of the assignment of the said bid by the said purchasers to the party of the sixth part hereto and in pursuance of the said decrees of the said Courts respectively, have granted, bargained, sold, assigned, transferred and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey unto the said party of the sixth part to-wit, Union Pacific Railroad

Company, the corporation organized as aforesaid under and pursuant to the laws of the State of Utah, all their right, title and interest in, of, or to, any property vested or standing in their names, or to which they have acquired title or right as such Receivers in the management and operation of the premises covered by and embraced in the said First Mortgage, so far as the same may be appurtenant to the said premises, and including any property and income acquired or received by the said Receivers as Receivers in the said causes through the operation of the mortgaged premises and any property acquired by the Receivers in the said Ames Cause for, or appropriated by them to the use of, the railroad and telegraph covered by the said First Mortgage, or necessary to the said railroad and telegraph line for running and operating the same, as fully and absolutely as the said Receivers may or ought by virtue of the said decrees to convey the same, Subject Nevertheless, to all the debts, liabilities and obligations of the said Receivers as specified in the said decrees; To Have and To Hold all and singular the said property, real and personal, unto the said party of the sixth part hereto its successors and assigns forever.

And this Indenture Further Witnesseth that the said F. Gordon Dexter and Oliver Ames, parties of the third part hereto, as Trustees under the said First Mortgage, dated November 1, 1865, described in the said decrees, in consideration of the premises and of the payment of the sums as aforesaid by the said purchasers and of the assignment of the said bid by the said purchasers to the party of the sixth part hereto, and in pursuance of the said decrees and orders of the said Courts, respectively, have transferred and released, and by these presents do transfer and release, to the said Union Pacific Railroad Company, party of the sixth part hereto, its successors and assigns forever, all the right, title and interest of the said parties of the third part hereto in and to all the property covered by the said First Mortgage, or upon which the said First Mortgage is a lien, as fully and absolutely as they may or ought by virtue of the said decrees to transfer and release the same: To have and to Hold all and singular the said railroad, property and premises unto the said party of the sixth part hereto, its successors and assigns forever.

And This Indenture Further Witnesseth that said

The Union Pacific Railway Company, party hereto of the fourth part, for and in consideration of the premises and in pursuance of the said decrees and orders of the said Courts respectively, has bargained, sold, assigned, transferred conveyed and released, and by these presents does bargain, sell, assign, transfer, convey and release unto the party hereto of the sixth part, all the right, title and interest of The Union Pacific Railway Company, party hereto of the fourth part, in and to the said railroad, rights, properties functions, franchises, privileges, immunities, money and credits which by the said decrees were ordered to be sold, and all the property described in the said decrees and therein ordered to be sold and herein conveyed, assigned, transferred or released by the parties of the first, second and third parts, respectively, to this Indenture, as fully and absolutely as the said party of the fourth part hereto can or ought by virtue of the said decrees to convey the same: To have and to hold all and singular the said railroad, premises and property, real and personal, unto the said party of the sixth part hereto, its successors and assigns forever.

And This Indenture Further Witnesseth that the said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, being the purchasers at the said sale of the said railroad, property and premises herein conveyed by the said Special Master under the said decrees of foreclosure, having assigned, transferred and set over, as hereinbefore recited, unto the party of the sixth part their said bid and their right to receive conveyance of the railroad, franchises and other property purchased, and all their other rights under the said decrees, or by virtue of their said bid and purchase, do hereby join in the execution of this Indenture for the purpose of releasing and confirming, and they do hereby release and confirm unto the said Union Pacific Railroad Company, party hereto of the sixth part, and its successors and assigns forever all of their right, title and interest in and to the property and premises in this Indenture conveyed and each and every part thereof.

It is understood that no personal covenant or liability is to be implied from this deed against the said parties of the first, second, third, and fifth parts or against any of such parties.

In order to facilitate the recording hereof, twenty-five originals of this indenture have been executed, acknowledged and delivered by the respective parties, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered, shall be deemed an original and all collectively but one instrument.

In Witness Whereof, the said parties hereto of the first, second, third and fifth parts, have hereunto set their hands and seals, and the parties of the fourth and sixth parts have caused these presents to be signed by their respective officers, duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective secretaries the day and year first above written.

William D. Cornish [Seal] Special Master.

S. H. H. Clark [Seal]
Oliver W. Mink [Seal]
E. Ellery Anderson [Seal]
J. W. Doane [Seal]
F. R. Coudert [Seal]
} as Receivers

F. Gordon Dexter [Seal]
Oliver Ames, [Seal]
} as Trustees.

Louis Fitzgerald [Seal]
Alvin W. Krech [Seal]
} Purchasing Trustees.

The Union Pacific Railway Company,
[Seal] By S. H. H. Clark,
President.

Attest: Alex Millar,
Secretary.

Union Pacific Railroad Company,
[Seal] By Horace G. Burt,
President.

Attest: Alex Millar,
Secretary.

Lawrence Greer.

Signed, sealed and delivered by William D. Cornish, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane,

Louis Fitzgerald, and Alvin W. Krech in the presence of:

Edward Van Ingen.
T. M. Orr.

By Silas H. H. Clark in the presence of:

F. C. Davis.
Lawrence Greer.

By F. Gordon Dexter and Oliver Ames in the presence of:

Edward Van Ingen.
T. M. Orr.

By S. H. H. Clark, President on behalf of The Union Pacific Railway Company in the presence of:

F. C. Davis.
Lawrence Greer.

By Alex. Millar, Secretary, on behalf of The Union Pacific Railway Company in the presence of:

Edward Van Ingen.
Lawrence Greer.

By Horace G. Burt, President and Alex. Millar, Secretary, on behalf of Union Pacific Railroad Company, in the presence of:

Edward Van Ingen.

State of New York,
City and County of New York. } ss.

I, Edward Van Ingen, Notary Public in and for the State and County aforesaid, do hereby certify that William D. Cornish, Special Master appointed by the United States Circuit Courts for the District of Nebraska, the Southern District of Iowa, the Districts of Wyoming, Colorado and Utah, in the causes in the foregoing Deed of Conveyance mentioned for the purpose of making the sale therein referred to and whose name is signed to the foregoing deed of conveyance or writing bearing date on the 22nd day of January, 1898, and who is personally known to me and known to me to be the same person who executed the same, has this day personally appeared before

me, the subscribed, and has duly acknowledged the same before me in my State and County aforesaid to be his voluntary act and deed, and duly acknowledged that he executed the same as his free and voluntary act and deed for the uses, purposes and considerations therein expressed and mentioned, to the end that the same might be recorded as such.

Given under my hand and official seal this 25th day of January in the year one thousand eight hundred and ninety-eight. My commission expires March 30th, 1899.

[SEAL] Edward Van Ingen,
Notary Public for the City and County of
New York, State of New York.

State of New York, } ss.
County of New York. }

I, William Sohmer, Clerk of the County New York, and also Clerk of the Supreme Court for the said County, the said Court being a Court of Record having a seal, Do Hereby Certify that Edward Van Ingen, before and by whom the foregoing acknowledgment was taken, was at the time of taking the same a Notary Public residing in said County, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the said acknowledgments thereof are in due form of law, and that said deed is executed and acknowledged according to the law of the State of New York. And, further, that I am well acquainted with the hand writing of said Edward Van Ingen, Notary Public, and that I verily believe the signature to said certificate of acknowledgment is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Court and County the 26th day of January 1898.

[SEAL] Wm. Sohmer,
Clerk.

State of New York } ss.
City and County of New York. }

I, Edward Van Ingen, a Notary Public in and for the State and County aforesaid, do hereby certify that Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and

John W. Doane, Receivers appointed by the United States Circuit Courts for the District of Nebraska, the Southern District of Iowa, the Districts of Wyoming, Colorado and Utah, in the causes in the foregoing Deed of Conveyance mentioned, and whose names are signed to the foregoing deed of conveyance or writing, bearing date on the 22d day of January, 1898, and who are personally known to me and known to me to be the same persons who executed the same, have this day personally appeared before me, the subscriber and have duly acknowledged the same before me in my State and County aforesaid to be their act and deed as such Receivers and duly acknowledged that they executed the same as their free and voluntary act and deed as such Receivers for the uses, purposes and considerations therein expressed and mentioned, to the end that the same might be recorded as such.

Given under my hand and official seal this 26th day of January, in the year one thousand eight hundred and ninety-eight. My commission expires March 30th, 1899.

Edward Van Ingen,

[SEAL] Notary Public for the City and County of New York, and State of New York.

State of New York } ss.
County of New York. }

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the said Court being a Court of Record having a seal, Do Hereby Certify that Edward Van Ingen, before and by whom the foregoing acknowledgment was taken, was at the time of taking the same a Notary Public residing in said County, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said state, and that said conveyance and the said acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of the State of New York. And, further, that I am well acquainted with the handwriting of said Edward Van Ingen, Notary Public, and that I verily believe the signature to said certificate of acknowledgment is genuine.

IN Witness Whereof, I have hereunto set my hand

and affixed the seal of the said Court and County the 26th day of January 1898.

Wm. Sohmer,
Clerk.

[SEAL]

State of Texas, } ss.
County of Bexar. }

I, F. C. Davis, a Notary Public in and for the State and County aforasaid, do hereby certify that Silas H. H. Clark, one of the receivers appointed by the United States Circuit Court for the District of Nebraska, Southern District of Iowa, the Districts of Wyoming, Colorado and Utah, in the causes in the foregoing deed of conveyance mentioned and whose name is signed to the foregoing deed of conveyance or writing, bearing date on the 22d day of January, 1898, and who is personally known to me and known to me to be the same person who executed the same, has this day personally appeared before me, the subscriber, and has duly acknowledged the same before me in my State and County aforesaid to be his voluntary act and deed and duly acknowledged that he executed the same as his free and voluntary act and deed for the uses, purposes and considerations therein expressed and mentioned, to the end that the same might be recorded as such.

Given under my hand and official seal this 22d day of January, in the year one thousand eight hundred and ninety-eight.

My Commission expires June 29th, 1899.

F. C. Davis,
Notary Public for the State and County aforesaid.

[SEAL]

The State of Texas, }
County of Bexar. }

I, Thad W. Smith, Clerk of the County Court in and for said County and State which court is a Court of record having a seal, do hereby certify that F. C. Davis, Notary Public, by and before whom the foregoing acknowledgment was taken, was at the time of taking the same a Notary Public residing in said County, and was duly authorized by the laws of said State, to take and certify acknowledgments or proofs of deeds of land in

said State, and that said conveyance and the acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of said State of Texas, and further, that I am well acquainted with the handwriting of said F. C. Davis, Notary Public, and that I verily believe the signature to said certificate and acknowledgment is genuine.

In Testimony Whereof, I hereunto set my hand and affixed the seal of the said Court this 22d day of January A. D., 1898.

Thad. W. Smith,
County Clerk, Bexar County, Texas.

[SEAL] By

Deputy.

State of New York, }
City and County of New York. } ss.

I, Edward Van Ingen, Notary Public, in and for said State and County, do hereby certify that F. Gordon Dexter and Oliver Ames, parties named in and whose names are subscribed to the foregoing Deed of Conveyance or writing bearing date the 22d day of January, 1898, and who are personally known to me and known to me to be the same persons who executed the same as Trustees as described in the foregoing conveyance, have this day personally appeared before me, as such Notary Public, and severally acknowledged the same before me to be their free act and deed, and severally duly acknowledged to me that they executed the same as Trustees, as aforesaid, as their free and voluntary act and deed for the uses, purposes and considerations therein expressed and mentioned to the end that the same might be recorded.

Given under my hand and official seal this 26th day of January, 1898. My commission expires March 30th, 1899.

[SEAL] Edward Van Ingen,
Notary Public for the City and County of New York, State of New York.

State of New York, }
County of New York. } ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said

County, the said Court being a Court of Record having a seal, Do Hereby Certify that Edward Van Ingen, before and by whom the foregoing acknowledgment was taken, was at the time of taking the same, a Notary Public, residing in said County, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the said acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of the State of New York. And, further, that I am well acquainted with the handwriting of said Edward Van Ingen, Notary Public, and that I verily believe the signature to said certificate of acknowledgment is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Court and County the 26th day of January 1898.

Wm. Sohmer,
Clerk.

[SEAL]

State of Texas }
County of Bexar. } ss.

I, F. C. Davis, a Notary Public in and for the said County, in the State aforesaid, duly commissioned and sworn as such officer, do hereby certify that there personally appeared before me S. H. H. Clark, the President of The Union Pacific Railway Company, personally known to me to be such President, and personally known to me, and known to me to be the same person whose name is signed to the foregoing instrument, and he acknowledged to me that he signed, sealed and acknowledged the same as his own free and voluntary act and deed, and as the free and voluntary act and deed of the said Company. And the said S. H. H. Clark also made oath and said that he knows the corporate seal of the said Company; that the seal affixed to the foregoing instrument is the corporate seal of the said Company, and that it was so affixed by order of the Board of Directors of the said Company, and that the said S. H. H. Clark, signed the name of said Company and his own name thereto as President by like order of said Board of Directors; and that the said instrument was signed, sealed and acknowledged for the uses and purposes

therein set forth, and to the end that the same might be duly recorded.

Given under my hand and official seal this 22d day of January A. D., 1898. My commission expires June 29th, 1899.

F. C. Davis
[SEAL] Notary Public for the County and State aforesaid.

The State of Texas } ss.
County of Bexar. }

I, Thad. W. Smith, Clerk of the County Court in and for said County and State, which Court is a Court of record having a seal, do hereby certify that F. C. Davis, Notary Public, by and before whom the foregoing acknowledgment was taken, was at the time of taking the same a Notary Public residing in said County, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the said acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of said State of Texas, and further, I am well acquainted with the handwriting of said F. C. Davis, Notary Public, and that I verily believe the signature to said certificate of acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court this 22d day of January A. D., 1898.

Thad. W. Smith,
[SEAL] County Clerk, Bexar County, Texas.
By
Deputy.

State of New York, } ss.
City and County of New York. }

I, Edward Van Ingen, Notary Public, in and for the said county, in the State aforesaid, duly commissioned and sworn as such officer, do hereby certify that there personally appeared before me Alex. Millar, the Secretary of The Union Pacific Railway Company, personally known to me to be such secretary, and personally known to me and known to me to be the same person whose name is

signed to the foregoing instrument, and he acknowledged to me that he signed, sealed and acknowledged the same as his own free and voluntary act and deed, and as the free and voluntary act and deed of the said company. And the said Alex. Millar also made oath and said that he knows the corporate seal of the said company; that the seal affixed to the foregoing instrument is the corporate seal of said company, and that it was so affixed by order of the Board of Directors of the said company, and that S. H. H. Clark signed the name of said company and his own name thereto as president, and the said Alex. Millar signed his name thereto as secretary by like order of said Board of Directors; and that the said instrument was signed, sealed and acknowledged for the uses and purposes therein set forth, and to the end that the same might be duly recorded.

Given under my hand and official seal this 25th day of January A. D., 1898. My commission expires March 30th, 1899.

Edward Van Ingen,
[SEAL] Notary Public for the City and County of New York, State of New York.

State of New York, }
County of New York. } ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the said Court being a Court of Record having a seal Do Hereby Certify that Edward Van Ingen, before and by whom the foregoing acknowledgment was taken, was at the time of taking the same a Notary Public residing in said County, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the said acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of the State of New York. And, further, that I am well acquainted with the handwriting of said Edward Van Ingen, Notary Public, and that I verily believe the signature to said certificate of acknowledgment is genuine.

In Witness Whereof, I have hereunto set my hand

and affixed the seal of the said Court and County the 26th day of January 1898.

Wm. Sohmer,
Clerk.

State of New York,
City and County of New York. } ss.

I, Edward Van Ingen, a Notary Public in and for the State and County aforesaid, do hereby certify that Louis Fitzgerald and Alvin W. Krech, named in and whose names are signed to the foregoing deed of conveyance or writing above, bearing date on the 22d day of January, 1898, and who are personally known to me and known to me to be the same persons who executed the same, have this day personally appeared before me the subscriber, and having severally acknowledged the same before me in my State and County aforesaid to be their act and deed, and severally duly acknowledged that they executed the same as their free and voluntary act and deed for the uses, considerations and purposes therein expressed and mentioned, to the end that the same might be recorded as such.

Given under my hand and official seal this 26th day of January, in the year one thousand eight hundred ninety-eight. My commission expires March 30, 1899.

Edward Van Ingen,
[SEAL] Notary Public for the City and County of New York, State of New York.

State of New York,
County of New York. } ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the said Court being a Court of Record having a seal, Do Hereby Certify that Edward Van Ingen, before and by whom the foregoing acknowledgment was taken, was at the time of taking the same a Notary Public residing in said County, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the said acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of the State of New York. And, fur-

her, that I am well acquainted with the handwriting of aid Edward Van Ingen, Notary Public, and that I verily elieve the signature to said certificate of acknowledgment s genuine.

In witness whereof, I have hereunto set my hand and ffixed the seal of the said Court and County the 26th day f January, 1898.

Wm. Sohmer,
Clerk.

[SEAL]

State of New York,
City and County of New York. } ss.

I, Edward Van Ingen, Notary Public in and for the said ity and county in the State aforesaid, duly commissioned and sworn as such officer, do hereby certify that here personally appeared before me Horace G. Burt, the President and Alex. Millar the Secretary of Union Pacific Railroad Company, party of the sixth part in the foregoing ndenture, personally known to me to be such President nd Secretary respectively, and personally known to me nd known to me to be the same persons whose names are igned to the foregoing instrument, and they severally cknowledged the same as their own free and voluntary ct and deed, and as the free and voluntary act and deed f the said company. And the said Horace G. Burt, and Alex. Millar, also made oath and said that they know the orporate seal of the said company; that the seal affixed to he foregoing instrument is the corporate seal of said company, and that it was so affixed by order of the Board of Directors of the said company, and that the said Horace . Burt signed the name of said company and his own ame thereto as President, and the said Alex. Millar igned his name thereto as Secretary, by like order of said Board of Directors; and that the said instrument was igned, sealed and acknowledged for the uses and purposes therein set forth, and to the end that the same might e duly recorded.

Given under my hand and official seal this 25th day f January A. D., 1898. My commission expires March 0th, 1899.

Edward Van Ingen,
Notary Public for the City and County
of New York, State of New York.

[SEAL]

State of New York. }
County of New York, } ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the said Court being a Court of Record having a seal, Do Hereby Certify that Edward Van Ingen before and by whom the foregoing acknowledgment was taken, was at the time of taking the same a Notary Public residing in said County, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the said acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of the State of New York. And further, that I am well acquainted with the hand writing of said Edward Van Ingen, Notary Public, and that I verily believe the signature to said certificate of acknowledgment is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Court and County the 26th day of January, 1898.

Wm. Sohmer,
Clerk.

[SEAL]
Compared.

State of Iowa, }
Pottawattamie Co. } ss.

Filed for record the 31 day of January A. D. 1898 at 12:30 o'clock P. M., and recorded in Book 356 Page 195 of County Records.

W. M. Shepard,
Recorder.

Entered for taxation Jan 31 1898

J. M. Mathews,
Auditor.

Except as to property not in Pottawattamie County, Iowa, and except also Lots in Bayliss Addition, Council Bluffs, Iowa.

J. M. Mathews,
Aud.

Entered for taxation Jan 31 1898

By J. M. Mathews,
Auditor.

Lots 1-2-3-4 & 5 Block 13 Bayliss Second Addition to Council Bluffs, Iowa, said property as shown by the records of Pottawattamie County, being formerly held by McFarland & Atkins as Trustees for The Union Pacific Railway Company.

J. M. Mathews,
Auditor.

JUDGE MCHUGH: Complainant now offers in evidence certain testimony given by Mr. Alexander Millar, in the foreclosure suit in the Circuit Court of the United States for the Eighth Circuit in the case of the *United States of America, Complainant vs. The Union Pacific Railway Company, et al., Defendants.*

MR. BALDWIN: The defendant objects to this as incompetent, irrelevant and immaterial, this objection not to reach the fact that Mr. Millar was not personally present at this time to testify to these facts, and I admit that he did testify to these facts on said hearing.

It being agreed by the parties that this testimony as offered shall be considered in all respects as if witness was present and sworn and testified in this case.

The testimony offered on the part of complainant as above referred to is as follows: (being read from the record thereof).

Q. Mr. Millar, what is your official relation to the Union Pacific Railway Company, and to the Receivers?

A. I am the Secretary and Assistant Comptroller for the company and for the Receivers.

Q. How long have you held those offices as respects the company?

A. I have been the Secretary of the company since April, 1888, and Assistant Comptroller for about a year—of the company only.

Q. And when did your official relation with the Receivers begin, and what has it been?

A. It began in October, 1893, as Secretary and Assistant Comptroller, and has continued so ever since, and still continues.

Q. Did you have any relation to the railway company previous to 1888?

A. Yes, sir; I had been in the treasurer's office from

1872 and in the comptroller's office from its formation in 1885.

Q. You mean from the formation of the consolidated company, The Union Pacific Railway Company?

A. No, from the formation of the Comptroller's Office.

Q. And your original connection was with the Union Pacific Railroad Company?

A. Yes, sir.

Q. And has continued in some capacity, or another, as you have stated, from 1872, with the Union Pacific Railroad Company and The Union Pacific Railway Company down to this date?

A. Yes, sir.

Q. Have you in your custody the records of the Union Pacific Railway Company?

A. I have.

Q. In your official capacity?

A. Yes, sir.

Q. They include the records of the proceedings of stockholders and directors?

A. Yes, sir.

Q. And you also, in the same capacity, have custody of the records of the Union Pacific Railroad Company, the original company?

A. Yes, sir.

Q. Will you give a description of the railroad originally constructed by the Union Pacific Railroad Company?

A. The line of the Union Pacific Railroad Company as originally built extended from a point in section 10, township 15 north range 13 east, near Omaha, in the State of Nebraska, to a point five miles west of Ogden, Utah, being a distance of 1,038.68 miles.

Q. And it passed through what states.

A. Passing through the states of Nebraska, part of Colorado, Wyoming and Utah.

Q. And into the state of Utah, you mean, don't you?

A. And into the state of Utah.

Q. Can you state when the construction as to which you have testified was begun, and when it was completed?

A. The records of the company show that construction was begun in 1864 and continued down to May, 1869, when the road was opened.

Q. The bridge across the Missouri river between Council Bluffs and Omaha, and its approaches, and the railroad over the bridge, were constructed subsequently, were they not?

A. Yes, sir.

Q. When was the construction of that bridge commenced?

A. The work on the bridge was begun in 1870, and carried on through 1871, and completed in February, 1872.

Q. Can you state whether the Union Pacific Railroad Company ever received any bonds of the United States, in aid of the construction of its railroad, issued under the Acts of Congress approved July 1, 1862, and July 2, 1864.

A. Yes, sir, such bonds were received.

Q. From whom?

A. From the Secretary of the Treasury of the United States?

Q. To what aggregate amount? The amount aggregated $27,236,512.00.

JUDGE MCHUGH: Complainant now offers in evidence certain testimony given by Birdsall A. McAllaster, in the foreclosure suit in the Circuit Court of the United States for the Eighth Circuit in the case of the *United States of America, Complainant vs. The Union Pacific Railway Company, et al., defendants.*

MR. BALDWIN: The defendant objects to this as incompetent, irrelevant and immaterial, this objection not to reach the fact that Mr. McAllaster was not personally present at this time to testify to these facts, and I admit that he did testify to these facts on said hearing.

It being agreed by the parties that this testimony as offered shall be considered in all respects as if witness was present and sworn and testified in this case.

The testimony offered on the part of the complainant as above referred to is as follows: (Being read from the record thereof).

"Q. What is your full name and residence?

A. Birdsall A. McAllaster, Omaha, Nebraska.

Q. What is your relation to the Union Pacific Railway Company, and to its Receivers, if any?

A. I am the Land Commissioner for the Receivers and the Railway Company.

Q. How long have you been Land Commissioner for the Union Pacific Railway Company?

A. Since May 1, 1890.

Q. Continuously?

A. Yes, sir.

Q. And for the Receivers since their appointment?

A. Since their appointment.

Q. What are your functions as Land Commissioner?

A. To superintend the sale and disposition of lands and look after them generally.

Q. You are the head of the Land Department?

A. Yes.

* * * *

Q. Can you state the original acreage embraced in the Land Grant to the Union Pacific Railroad Company?

A. The grant to the Union Pacific Railroad Company originally embraced about 11,401,561.30 acres.

At this point the further taking of testimony in this case was, by agreement of parties hereto, adjourned until May 11th, 1903, at 10 o'clock A. M., to the office of A. Leonard Brougham, No. 32 Liberty Street, New York City, New York.

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Office of A. Leonard Brougham,
No. 32 Liberty Street,
New York City, New York, May 11th, 1903,
10 o'clock A. M.

Met pursuant to adjournment.

Further proceedings were as follows, to-wit:

Alvin W. Krech, being called and sworn as a witness, testified as follows:

DIRECT EXAMINATION.

By Mr. Kellogg:

Q. What is your full name, Mr. Krech?

A. Alvin W. Krech.

Q. Where is your residence?

A. New York City.

Q. Are you an officer of the Mercantile Trust Company of New York?

A. I am.

Q. Were you ever connected with the Reorganization Committee of the Union Pacific Railroad Company?

A. I was.

Q. The Railway Company, I believe it was called?

A. I was.

Q. In what capacity?

A. I was Secretary of the Reorganization Committee.

Q. During its entire existence?

A. Yes.

(Plaintiffs' Exhibit 15 marked.)

Q. I show you plaintiffs' Exhibit 15, which purports to be a copy of the reorganization plan; state what that is, Mr. Krech.

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

WITNESS: What was the question?

By Mr. Kellogg:

Q. What is that paper?

A. That is a transcript of the printed plan of reorganization published by the committee in October, 1895.

Q. That is a correct copy of the agreement—the reorganization plan and agreement?

A. I believe it to be.

Q. It was made by you, wasn't it, Mr. Krech, or under your direction?

A. By my stenographer; yes, sir.

MR. KELLOGG: I offer this agreement of reorganization in evidence.

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant; but this objection is not to reach to the fact that this is a copy.

The agreement and plan of reorganization as offered in evidence is as follows:

PLAN AND AGREEMENT FOR THE
REORGANIZATION
of
THE UNION PACIFIC RAILWAY COMPANY,
Including its Kansas Pacific Lines.
Dated October 15, 1895.

Louis Fitzgerald,
Jacob H. Schiff,
T. Jefferson Coolidge, Jr.,
Chauncey M. Depew,
Marvin Hughitt,
Oliver Ames, 2nd,
Committee.

Winslow S. Pierce,
Counsel.

Kuhn, Loeb & Co.,
Bankers.

Alvin W. Krech,
Secretary.

DEPOSITARIES:

The Mercantile Trust Co. of New York.
Old Colony Trust Co. of Boston.
Bank of Montreal, of London.
Amsterdamsche Bank, of Amsterdam.
Deutsche Vereinsbank, of Frankfort-on-Main.

To the Security Holders of the Union Pacific Main Lines Proper, inclusive of the Kansas Pacific Line:

The system of the Union Pacific Railway Co. having become dismembered, and the holders of the securities of the branch lines having already taken steps for their own protection, it has become evident that the holders of the various kinds of bonds secured upon the main stem of the Union Pacific Railway Co., including the Kansas Pacific line, must combine in order to protect themselves.

The main difficulty in effecting a prompt reorganization of the Union Pacific Railway Co. proper, is in the impracticability thus far experienced of reaching a settlement with the United States Government, which holds a second lien upon the Union Division from Omaha to a point 5 miles west of Ogden, 1,038 miles, and on the Kansas Division from Kansas City (exclusive of the Kansas City, Missouri, terminals) west to the 394th Mile Post in Kansas;

but which has no lien upon that part of the Kansas Pacific line between the 394th Mile Post and Denver, 245 miles, nor on the Leavenworth Branch, Leavenworth to Lawrence Junction, 32 miles, nor on the Cheyenne Division, Denver to Cheyenne, 104 miles. Congress having thus far been unwilling to pass any legislation authorizing a settlement, it becomes imperatively necessary on the part of the holders of the First Mortgage Bonds, of which part have already matured, and all of which will mature within the next few years, to combine for an enforcement of their prior lien. Eminent counsel have advised that the lien of the First Mortgage Bonds may be effectively foreclosed; and while it is very desirable to make a settlement with the United States Government, and to continue efforts in this direction, further delay on the part of the First Mortgage Bondholders in protecting themselves by securing their legal rights would be likely to become dangerous and to result in loss.

The undersigned have been asked by large interests to formulate and proceed with a reorganization, which shall at once secure to the holders of the First Mortgage and other bonds requiring consideration in reorganization a full return in new securities of the successor Company with fixed charges based upon the lowest results from the operation of the main line, and the Kansas Pacific and Denver Pacific lines which have been obtained during the times of the greatest depression. A Plan is submitted herewith to the consideration of the security holders, which, it is believed, fully carries this purpose into effect, and at the same time secures to First Mortgage Bondholders the payment of the matured and maturing interest until it shall become practicable to carry out the reorganization. Should this end, contrary to expectation, not be attained, the bonds which holders are requested to deposit without delay will be returned without expense.

Prompt action on the part of bondholders in uniting being imperative, the time during which deposits can be made has been limited to December 31st, 1895, after which date no bonds will be admitted, unless otherwise determined, except upon the payment of a penalty of five per cent.

Stockholders must likewise deposit their share-certificates, properly endorsed, prior to December 31st, 1895,

but will not be required to pay any part of the assessment of $15 a share until the same is called for hereafter by the Committee after the Plan shall have been declared operative. Upon stock deposited after December 31st, 1895, the assessment will be at the rate of $20 a share, unless otherwise determined, $5 of which shall be payable at the time of deposit, as a penalty.

In case the reorganization is abandoned, without having been declared operative, holders of receipts will receive back the shares to which they are entitled, without expense to them, on surrender of their receipts, properly endorsed, at the Depositaries which issued them.

Deposits may be made at any of the Depositaries on and after November 1, 1895, from which date matured coupons on First Mortgage Bonds will be cashed as provided in the Plan.

The Committee may at any time after December 31, 1895, alter the penalties above specified or decline to receive further deposits of bonds or stock.

The Mercantile Trust Company of New York has been designated as the Central Depositary both for the bonds and the stock (with auxiliary Depositaries as set forth in the Plan), and will issue engraved Certificates of Deposit, for the listing of which application will be made to the New York Stock Exchange at the proper time. Temporary receipts will be issued in exchange for securities deposited until the engraved Certificates shall be ready.

Protective Committees already organized in the interests of the holders of either of the classes of bonds embraced in the Plan are invited to confer and co-operate with this Committee in respect to such interests.

New York, October 15, 1895.

Louis Fitzgerald,
Jacob H. Schiff,
T. Jefferson Coolidge, Jr.,
Chauncey M. Depew,
Marvin Hughitt,
Oliver Ames, 2nd,
Committee.

## Reorganization of the Union Pacific Railway Company.

### Statement.

Mileage:

The main lines of the Union Pacific Railway Company are as follows:

| | |
|---|---|
| Union Division—Council Bluffs to a point 5 miles west of Ogden | 1,048.01 miles |
| Kansas Division—Kansas City to Denver. | 643.55 " |
| Leavenworth Branch — Lawrence to Leavenworth | 31.93 " |
| Cheyenne Division—Denver to Cheyenne. | 104.10 " |
| Total main line mileage | 1,827.59 " |

Lands:

The outstanding land and town lot contracts on December 31st, 1894, were as follows:

| | |
|---|---|
| Union Division | $2,727,480.27 |
| Kansas Pacific and Denver Pacific Divisions | 3,435,271.28 |
| Total | $6,162,751.55 |

It is believed that a considerable amount of these contracts, will as a result of the recent industrial depression, be cancelled, in which event the figures in the following table should be correspondingly increased.

The acreage and estimated value of unsold Land Grant lands, excluding those under contract, on December 31st, 1894, were as follows:

| Division. | Acres. | Estimated Value. |
|---|---|---|
| Union | 3,345,000 | $ 3,157,000 |
| Kansas Pacific and Denver Pacific | 3,179,000 | 10,201,500 |
| Total | 6,524,000 | $13,358,500 |

FUNDED DEBT (OCT. 1, 1895):

Union Division:

| | | |
|---|---|---|
| Union Pacific First Mortgage, 6s..... due Jan. 1896–1899. | | $27,229,000 |
| Union Pacific Land Grant 7s..... due April 1, 1899. | | 7,000 |
| Union Pacific Sinking Fund 8s ..... due Sep. 1, 1899. | | 3,730,000 |
| Union Pacific Omaha Bridge 8s..... due April 1, 1896. | | 508,000 |
| Union Pacific Omaha Bridge Renewal 5s..... due Oct. 1, 1915. | | 1,056,000 |
| Union Pacific | Not embraced in reorganization. Collateral Trust 6s..... due July 1, 1908. | 3,626,000 |
| Union Pacific | Collateral Trust 5s..... due Dec. 1, 1907. | 4,677,000 |
| Union Pacific | Collateral Trust 4½s..... due Nov. 1, 1918. | 2,030,000 |
| Union Pacific | Equipment Trust 5s..... due 1896 to 1900. | 1,149,000 |
| Union Pacific | Collateral Trust Notes 6s.. due Aug. 1, 1894. | 8,610,000 |
| | | $52,622,000 |

KANSAS PACIFC AND CHEYENNE DIVISIONS AND LEAVENWORTH BRANCH:

| | |
|---|---|
| Eastern Division 6s.. ..... due Aug. 1, 1895. | $2,240,000 |
| Middle Division 6s..... due June 1, 1896. | 4,063,000 |
| Denver Extension 6s..... due May 1, 1899. | 5,887,000 |
| Kansas Pacific Consolidated 6s..... due May 1, 1919. | 11,724,000 |
| Kansas Pacific Income 7s..... due July 1, 1916. | 263,700 |
| Kansas Pacific Income subordinated 7s.... .. due July 1, 1916. | 4,011,650 |
| Kansas Division and Collateral 5s..... due May 1, 1921. | 5,000,000 |

| | |
|---|---|
| Denver Pacific First Mortgage 7s..... due May 1, 1899. | $975,000 |
| Leavenworth Branch First Mortgage 7s..... due Jan. 1, 1896. | 600,000 |
| | $34,764,350 |

(*) INDEBTEDNESS TO THE GOVERNMENT.

| | |
|---|---|
| For principal..... due Nov. 1, 1895, to Jan. 1, 1899. | $33,539,512 |
| For interest (approximately after deducting estimated value of the sinking Fund)..... | 19,500,000 |
| | $53,039,512 |
| TOTAL FUNDED DEBT..... | $140,425,862 |

CAPITAL STOCK:

The capital stock of The Union Pacific Railway Company outstanding is.....$60,868,500

(*) NOTE.—The lien of the Government for the security of this debt is a second lien subordinate to the lien of the First Mortgage bonds on the Union Division, and of the Eastern and Middle Division bonds on 394 miles of the Kansas Division. The proportions of the Principal of the debt ($33,539,512) applicable to the Union and Kansas Divisions, respectively, are as follows:

| | |
|---|---|
| Union Division debt to the Government..... | $27,236,512 |
| Kansas Division debt to the Government..... | 6,303,000 |

FIXED CHARGES:

The interest on the debt to the United States (Principal $33,539,512) has been an accumulating obligation, diminished only by application of withheld compensation for Government service and by Sinking Fund receipts. The accumulated interest, now aggregating, after all deductions, more than $19,000,000, will mature, it is claimed, with the maturity of the principal of the debt which now impends.

In the following table, which states the fixed charges of the Union Pacific Railway Company (proper) for each of the five years from 1890 to 1894, inclusive, the following liabilities are not included:

1. The excess of interest on the debt to the Government over the percentage of net earnings applicable to it under the Thurman and other Acts. (*)

2. Interests on bonds held in main line mortgage Trusts under conversion provisions.

3. The obligations under guaranties, determined by the deficit in the operations of auxiliary lines to meet interest or provide the traffic receipts guaranteed by the Union Pacific Railway Company.

Fixed charges or deductions from net earnings:

| | Interest on bonds. | Sinking Funds. | Government requirements. | Total charges. |
|---|---|---|---|---|
| 1890..... | $4,613,097.85 | $705,458.75 | $1,041,153.43 | $6,359,710.03 |
| 1891..... | 4,782,230.29 | 708,332.50 | 1,278,488.82 | 6,769,051.61 |
| 1892. ..... | 5,371,587.40 | 705,172.50 | 1,338,044.37 | 7,414,804.27 |
| 1893..... | 4,902,594.03 | 666,182.50 | 1,203,303.73 | 6,772,080.26 |
| 1894..... .... | 4,767,613.81 | 677,685.00 | 1,249,061.46 | 6,694,360.27 |

Average charges as above for five years, $6,802,001.28.

(*)NOTE. The annual interest charge accumulating on this debt is $2,012,370.72, less the deductions above explained.

EARNINGS:

The following table shows the gross and net earnings resulting from the operation of the Union Pacific Main Lines (exclusive of the Company's income from other sources) for each of the ten years from 1885 to 1894, inclusive.

| Year | Gross Earnings | Net Earnings, Taxes Deducted |
|---|---|---|
| 1885 | $17,455,031.51 | $8,404,676.31 |
| 1886 | 17,806,132.59 | 7,522,707.02 |
| 1887 | 19,546,088.62 | 9,111,886.85 |
| 1888 | 19,898,816.93 | 8,119,468.16 |
| 1889 | 19,775,555.84 | 8,286,679.63 |
| 1890 | 20,438,208.36 | 7,274,759.06 |
| 1891 | 19,687,738.48 | 7,846,451.70 |
| 1892 | 20,361,401.66 | 8,550,268.22 |
| 1893 | 17,376,792.11 | 6,204,716.81 |
| 1894 | 14,739,436,76 | 4,315,077.25 |

Average net earnings for ten years, $7,563,669.10.

GENERAL CONSIDERATIONS:

1. The mortgage debt for which provision is made in the following Plan for Reorganization is exclusive of main-line bonds held in Trusts or Sinking Funds under Mortgages included in the proposed reorganization—the issues being reduced, to that extent, for reorganization purposes.

The bonds thus available under new plan without the necessity for provision in new securities, are as follows:

| | |
|---|---|
| Omaha Bridge Renewal 5 per cent. Bonds (held by the Receivers) | $322,000 |
| Eastern Division Bonds (held in Denver Extension Sinking Fund) | 304,000 |
| Middle Division bonds (held in Denver Extension Sinking Fund) | 385,000 |
| Denver Extension bonds (held in Denver Extension Sinking Fund) | 1,781,000 |
| Kansas Pacific Consols. (held in Kansas Pacific Further Security Trust and by the Receivers) | 120,000 |
| Kansas Pacific Income 7s, unsubordinated (held in Kansas Pacific Consolidated Mortgage Trust) | 252,300 |
| Kansas Pacific Income 7s, subordinated (held in Kansas Pacific Consolidated Mortgage Trust) | 3,988,550 |
| Denver Pacific First Mortgage 7s (held in Kansas Pacific Consolidated Mortgage Trust) | 971,000 |
| Leavenworth Branch First Mortgage 7s (held in Kansas Pacific Consolidated Mortgage Trust) | 585,000 |

2. Nor does the reorganization include provision for the Collateral Trust obligations of The Union Pacific Railway Company. The securities embraced in these Trusts are largely those of companies which have already, by orders of court made in the original general receivership cause or in independent foreclosure proceedings, lost in part or in whole their character as portions of what has been distinctively known as the Union Pacific System. Independent reorganizations of many of these properties are pending. The purposes which brought into existence

guaranties of the obligations of many of these auxiliary companies have been accomplished by construction and otherwise, and considerations will not exist under reorganization for continued relations with these properties upon the basis of an assumption of any of their fixed charges. Geographical conditions and considerations of mutual advantage point to a continued operation of such of these auxiliary properties as have had a demonstrated value, in harmony with that of the reorganized company, and relief from the burden of these guaranties will, it is believed, be an advantage obtained without detriment to the earning capacity of the property.

3. The total charges for the prosperous year of 1892 (including interest on fixed bonds, mortgage sinking funds, government deductions and requirements, and other charges made up in large part of guaranty obligations) aggregated the sum of $7,881,475.44; or a sum greater by $881,475.44 than an amount necessary to pay the annual interest on the maximum Mortgage Debt and full dividend on the maximum issue of Preferred Stock contemplated in the following plan of reorganization:

The *maximum* interest and dividend requirements under the Plan applied to the average annual net earnings of the past 10 years show these results:

NET EARNINGS.

| | |
|---|---|
| Average Net Earnings of Union Pacific Railway (proper) for 10 years, 1885 to 1894, inclusive | $7,563,669 |

INTEREST AND DIVIDENDS.

| | |
|---|---|
| Annual Interest on the maximum issue of $100,000,000. Four Per Cent. Bonds under following plan | $4,000,000 |
| Annual Four Per Cent. Dividend on the maximum issue of $75,000,000. Preferred Stock | 3,000,000 |
| Interest and Dividends on Preferred Stock | $7,000,000 |
| Average Surplus over Interest and Full Dividends on Preferred Stock | 563,669 |

NOTE: The lowest net earnings realized by the Union Pacific Railway were those of the year 1894, when they

were $4,315,077.25, or $315,077.25 in excess of interest on the maximum amount of bonds as proposed in the following Plan.

PLAN:

It is proposed, through such foreclosure proceedings as the Committee shall cause to be instituted or shall adopt, or through such other means as the Committee shall determine, that a new company shall succeed to (or that the present company reorganized upon the basis of indebtedness fixed in this plan shall retain) the main lines and lands covered by the mortgages included in the plan.

The New Company shall issue the following

NEW SECURITIES:

| | |
|---|---|
| First Mortgage Railway and Land Grant Fifty Year Four Per Cent. Gold Bonds | $100,000,000 |
| Four per cent. preferred stock | 75,000,000 |
| Common stock | 61,000,000 |

NEW BONDS:

The new bonds shall be dated January 1, 1897, and shall bear interest from that date payable on the first days of each January and July thereafter until maturity. They shall be secured by a First Mortgage lien upon all the main line mileage of The Union Pacific Railway Company, upon the equipment acquired by the new company and upon the unsold lands and the land contracts embraced in the trusts of the Union Pacific Land Grant and Sinking Fund Mortgages, the Denver Extension First Mortgage, the Kansas Pacific Consolidated First Mortgage and the Denver Pacific First Mortgage, and upon such branch lines of railway as the Committee shall avail of through the ownership of branch line bonds in the trust of the Kansas Pacific Consolidated First Mortgage.

NEW PREFERRED STOCK:

The new preferred stock shall be entitled to Four per cent. non-cumulative dividends, payable out the net or surplus earnings of the Reorganized Company before the payment of any dividend on the Common Stock.

## The following will be the
### Distribution of New Company's Securities.

| | New 4 % 50-Year Gold Bonds | | New Preferred Stock | | New Common Stock |
|---|---|---|---|---|---|
| | % | Amount | % | Amount | Amount |
| For Union Division Debt: | | | | | |
| 1. Union Pacific First Mortgage 6s | 100 | $27,229,000 | 50 | $13,614,500 | |
| (*) 2. Land Grant 7s | ..... | ..... | ..... | | |
| 3. Sinking Fund 8s | 100 | 3,730,000 | 50 | 1,865,000 | |
| 4. Omaha Bridge 8s | 100 | 508,000 | 50 | 254,000 | |
| 5. " " Renewals, 5s | 100 | 734,000 | 25 | 183,500 | |
| For Kansas Division Debt: | | | | | |
| 1. Eastern Division 6s | 100 | 1,936,000 | 50 | 968,000 | |
| 2. Middle " 6s | 100 | 3,678,000 | 50 | 1,839,000 | |
| 3. Denver Extension First 6s | 100 | 4,106,000 | 50 | 2,053,000 | |
| 4. Consolid. First Mge 6s | 80 | 9,283,200 | 50 | 5,802,000 | |
| (†) " " Defaulted Interest | ..... | ..... | 25 | 2,901,000 | |
| 5. Income 7s (unsubordntd) | 80 | 8,880 | 50 | 5,550 | |
| 6. " " (subordintd) | 80 | 16,440 | 50 | 10,275 | |
| 7. Leavenworth Branch 7s | 80 | 12,000 | 50 | 7,500 | |
| 8. Denver Pacific Frst 7s | 80 | 3,200 | 50 | 2,000 | |
| 9. Kansas Division and Collateral Mge 5s | ..... | ..... | 50 | 2,500,000 | |
| For Assessment on Common Stock | ..... | ..... | 100 | 9,130,275 | |
| In Exchange for Common Stock of Union Pacific Ry Co. on Which Assessment is Paid Under the Plan | ..... | ..... | ..... | ..... | $60,868,500 |
| For Compensation to Reorganization Syndicate and Bankers | ..... | ..... | ..... | 6,000,000 | |
| Total Defined Issues for Reorganization Purposes | | $51,244,720 | | $47,135,600 | $60,868,500 |
| Reserved to dispose of Equipment Obligations and for Reorganization and Corporate Uses | | $13,000,000 | | $7,000,000 | |
| Balance Reserved for Settlement of the Debt to the United States and for Extraordinary Requirements | | $35,755,280 | | $20,864,400 | $131,500 |

(*) The Union Trust Company of New York, Trustee under the Land Grant Mortgage, has funds in hand with which to pay the $7,000 outstanding bonds.

(†) Should a greater or less amount of interest than that here estimated be in default on these bonds at the date from which the new bonds bear interest, the provision in Preferred Stock will be varied accordingly so as to equal in amount such defaulted interest. Interest received by the Committee on deposited bonds of this class will be accounted for to the holders of corresponding Certificates of Deposit.

NOTE.

Allotment of new securities recast as follows:

To deposited KANSAS PACIFIC CONSOLIDATED FIRST MORTGAGE 6s, INCLUDING DEFAULTED INTEREST—

50 per cent in new 4 per cent 50-Year Gold Bonds,
110 per cent in new Preferred Stock.

To deposited UNION PACIFIC SINKING FUND 8s, INCLUDING DEFAULTED INTEREST—

75 per cent in new 4 per cent 50-Year Gold Bonds,
100 per cent in new Preferred Stock.

New Bonds will be dated July 1, 1897, and shall bear interest from that date.

CASH PROVISIONS FOR FIRST MORTGAGE BONDS.

Through arrangements made with the Syndicate hereafter mentioned, the following cash provisions are made in respect to defaulted and future interest on present outstanding First Mortgage bonds of the Union Pacific and Kansas Pacific Railway Companies, as shown in detail below.

FIRST. The coupons now in default upon the present First Mortgage bonds are to be purchased in cash for account of the Syndicate at the time of the deposit with the Committee of the bonds to which they pertain.

SECOND. Coupons maturing on deposited First Mortgage bonds in the interval between the deposit thereof under the plan and the date from which bonds of the new company are to bear interest (January 1st, 1897), are to be purchased by the Syndicate from the Committee, which in turn shall apply the amounts so received, at the respective

due dates of the coupons, to the payment of corresponding installments on its outstanding certificates applicable to such deposited bonds.

THIRD. At the time of the issue of the new Four Per Cent. bonds the difference between the interest at their rate at the rate of the present First Mortgage bonds (i. e., the rate difference of 2%) shall be adjusted in cash covering the periods between January 1st, 1897, and the respective dates of the maturity of the present bonds. The proportion of the current semi-annual interest installments which shall have accrued on January 1st, 1897, on such of said bonds as do not bear January coupons shall be likewise provided for in cash at the time of the delivery of the new bonds.

The BONDS to which the foregoing cash provisions apply and the extent of the CASH REQUIREMENTS to meet these provisions, are thus shown:

| | | |
|---|---|---|
| UNION PACIFIC FIRST 6s: | | |
| (Due in installments January 1, 1896, to January 1, 1899, inclusive.) | | |
| DEFAULTED COUPONS of January 1 and July 1, 1895 | | $1,633,740 |
| INTEREST MATURING, during pendency of plan, to and including January 1, 1897 | | 2,450,610 |
| ADJUSTMENT OF INTEREST as between rates of old and new bonds, 2 per cent. per annum, from January 1, 1897, to maturity of old bonds: | | |
| On $1,920,000 bonds, due July 1, 1897 | $19,200 | |
| On $5,999,000 bonds, due January 1, 1898 | 119,980 | |
| On $8,837,000 bonds, due July 1, 1898 | 265,110 | |
| On $2,400,000 bonds, due January 1, 1899 | 96,000— | 500,290 |
| KANSAS PACIFIC, EASTERN DIVISION, FIRST 6s: (Matured August 1st, 1895.) | | |
| DEFAULTED COUPONS of August, 1894, and February and August, 1895 | | 201,600 |

| | |
|---|---|
| INTEREST MATURING, during pendency of plan, to January 1st, 1897 | 190,400 |
| KANSAS PACIFIC, MIDDLE DIVISION, FIRST 6s: (Due June 1st, 1896.) | |
| DEFAULTED COUPONS of June 1st and December 1st, 1894, and June 1st, 1895 | 365,670 |
| INTEREST MATURING, during pendency of plan, to January 1st, 1897 | 385,985 |
| KANSAS PACIFIC, DENVER EXTENSION, FIRST 6s: (Due May 1st, 1899.) | |
| DEFAULTED COUPONS of May 1st and November 1st, 1894, and May 1st and November 1st, 1895 | 706,440 |
| INTEREST MATURING, during pendency of plan to January 1st, 1897 | 412,090 |
| ADJUSTMENT OF INTEREST as between rates of old and new bonds, 2 per cent. from January 1st, 1897, to maturity of old bonds | 274,727 |
| | $7,121,552 |

In all cases where the foregoing provisions apply to semi-annual interest installments not represented by coupons because of the prior maturity of the principal of the bonds, the Syndicate will take assignments of such interest installments from holders presenting their bonds for deposit, or from the Committee as to such bonds as shall have been deposited, and will hold and treat such assignments in the manner hereinafter provided with respect to coupons taken up by the Syndicate.

### ASSESSMENT.

The common stock of the present Company will be assessed at the rate of $15 per share.

Shareholders paying the assessment of $15 per share will receive the amount of the assessment (viz. $15 per share) in new preferred stock at par, and will also receive par of their present common stock in common stock of the new company.

Shareholders who do not pay their assessments as called will forfeit their rights. The stock assessment will be underwritten before the plan is declared operative.

The proceeds of the asessment shall be applicable to

the cash requirements of this plan as herein provided, and to such requirements as shall be fixed and determined by the Committee, including such expenses and charges as it shall make or incur in the premises, and suitable compensation to the members of the Committee.

The amount of this assessment shall be payable at such times and in such installments as the Committee shall determine after the plan has been declared operative, but not more than $5 per share shall be called in any consecutive thirty days.

### Reorganization Syndicate.

A Reorganization syndicate has been organized under the management of Messrs. Kuhn, Loeb & Company, Bankers, to furnish the sum of Ten million dollars for the following purposes:

1. To purchase all the interest coupons on First Mortgage bonds now in default.

2. To purchase as they shall mature hereafter the interest coupons on First Mortgage bonds and, also the semi-annual assignments of interest accruing on bonds already matured during the pendency of the Plan and until it shall become operative.

3. To purchase, if it shall be found advisable for the promotion of the reorganization, any outstanding First Mortgage bonds and Omaha Bridge bonds, and to deposit the same under this plan; and, if it shall be found advisable, to purchase all or any defaulted or future maturing coupons or interest assignments on Omaha Bridge bonds.

Coupons and interest assignments purchased for account of the Syndicate shall be deposited in The Mercantile Trust Company of New York, which shall issue its certificates for the same to the Syndicate, or such other course shall be taken in respect thereto as shall be determined by the Committee and the Bankers to effectively and conveniently carry out this feature of the plan, and as will secure to the Syndicate all rights of the bondholders in and to the coupons and interest claims so purchased and in and to the lien and right of enforcement of the lien thereof.

Such steps shall be taken in respect to all purchased coupons and interest assignments as will secure a valid

claim for cumulative interest in favor of the Reorganization Syndicate.

The right is reserved on behalf of the Committee, with the assent of the Bankers, to call for an increase of the amount required to be advanced by the Syndicate to Fifteen million dollars.

The Syndicate is to advance a sum not exceeding $100,000 for expenses repayable with six per cent. interest after the plan shall have been declared operative.

All advances made by the Syndicate shall be repayable to it in gold.

Six Million Dollars of preferred stock are to be turned over as compensation to the Syndicate, of which the Bankers are to retain One Million as their own compensation.

### Limitations of Time.

For Declaring Plan Operative:

The time for declaring this plan operative is to be limited to December 31st, 1896, with the right on the part of the Committee to extend the time for six months—namely, to June 30th, 1897. Notice that the plan is operative shall be given by publication through each of the Depositaries hereinafter mentioned.

For Deposit of Securities:

The time for the deposit of bonds receivable under this plan and of the shares of stock of the present company is limited to December 31st, 1895, after which date no bonds will be admitted except upon the payment of a penalty of five per cent. Upon shares of stock deposited after the time above limited (December 31st, 1895), the assessment will be at the rate of $20 a share. After the expiration of the limit of time the penalty of $5 a share will be payable at the time of deposit, and will not be refunded.

Deposits may be made on and after November 1st, 1895. The Committee reserves the right at any time to alter the penalties above specified or decline to receive further deposits of bonds or stock.

Should it in the opinion of the Committee appear desirable to make any substantial alterations in the foregoing plan, it shall make publication of such proposed alter-

ations for at least twenty days, during which time the security holders, not approving of the proposed alterations, shall be permitted to surrender their certificates of deposit and withdraw their securities, upon refunding with six per cent. interest the amounts advanced in purchase of the coupons and interest assignments on their respective bonds.

SECURITIES RECEIVABLE ON DEPOSIT UNDER THIS PLAN.

THE FOLLOWING SECURITIES will be received under this plan at either of the Depositaries hereinafter mentioned:

BONDS.

1. Union Pacific Railroad Company's First Mortgage bonds.
2. Union Pacific Railroad Company's Sinking Fund Mortgage Bonds.
3. Union Pacific Railroad Company's Omaha Bridge 8 per cent. Mortgage Bonds.
4. Union Pacific Railway Company's Omaha Bridge Renewal Bonds.
5. The Union Pacific Railway Company Kansas Division and Collateral Mortgage Bonds.
6. (Kansas Pacific) Union Pacific, Eastern Division, First Mortgage Bonds.
7. (Kansas Pacific) Union Pacific, Middle Division, First Mortgage Bonds.
8. Kansas Pacific Railway Denver Extension First Mortgage Bonds.
9. Kansas Pacific Railway Consolidated First Mortgage Bonds.
10. Kansas Pacific Railway Income Bonds.
11. Leavenworth Branch Bonds.
12. Denver Pacific Railway and Telegraph First Mortgage Bonds.

Also:

STOCK.

13. The Certificate of Stock of the Present Company.

DEPOSITARIES.

The Mercantile Trust Co., of New York.
Old Colony Trust Co., of Boston.

Bank of Montreal, of London.
Amsterdamsche Bank, of Amsterdam.
Deutsche Vereinsbank, of Frankfort-on-Main.

Bonds and shares may be deposited by the holders thereof in either of the above named Depositaries who shall issue their own negotiable certificates. After the plan has become operative, the Committee may order the transmission of securities deposited in any one of the Depositaries into the keeping of The Mercantile Trust Co., of New York, who shall constitute the central Depositary, and who shall, thereupon, issue its own engraved certificates for the previously issued certificates of the branch or auxiliary Depositaries.

Until the plan shall have been declared operative, depositors of bonds in either of the Depositaries may apply to have their bonds transferred to any other Depositary, upon payment of the expense thereof, and shall be entitled to the certificates of the last Depositary upon the surrender of the certificates previously issued to such depositors.

Holders of securities who shall have deposited the same in any one of the foreign auxilary Depositaries shall, where such securities have had the foreign Government stamp attached, be entitled to receive the new securities likewise with the foreign Government stamp.

For further particulars and powers of the Committee Depositors are referred to the agreement of which this plan is a part.

### Agreement.

An Agreement made this 15th day of October, 1895, between Louis Fitzgerald, Jacob H. Schiff, T. Jefferson Coolidge, Jr., Chauncey M. Depew, Marvin Hughitt, and Oliver Ames, 2nd, parties of the first part, and herein called the "Committee," and holders of such bonds and stock of The Union Pacific Railway Company as shall, conformably with the provisions of the annexed Plan and of this Agreement, be deposited as in said Plan and herein provided, parties of the second part, and herein called "Depositors."

Whereas, the parties of the first part have been and hereby are constituted a Committee for the reorganization of the affairs of The Union Pacific Railway Company

proper, inclusive of its Kansas Pacific lines, and have formulated the annexed Plan for such reorganization:

NOW THIS AGREEMENT WITNESSETH:

That each and every person or party who shall have deposited with either of the Depositaries hereunder as hereinafter provided any bonds of the Union Pacific Railway Company receivable under this Agreement, or any stock of said Company, hereby promises and agrees to and with the Committee and every other party hereto, and they and the Committee respectively promise and agree as follows:

FIRST. Printed copies of this Agreement, certified by a majority of the Committee and lodged respectively with the Depositaries, shall be held and taken as the original Agreement. The said plan is, and shall be, taken to be a part of this Agreement, with the same effect as though each and every provision thereof had been embodied herein, and said Plan and this Agreement shall be read as parts of one and the same instrument; but it is understood, however, that no estimate, statement, explanation or suggestion in said Plan, or in the statement which precedes the same, or in this Agreement, or in any circular issued or to be issued by the Committee, is intended to or shall operate as a representation or warranty or as a condition of the deposit of securities hereunder, and no error or defect therein shall operate to release any depositing security holder except with the consent of the Committee.

Depositors of securities shall receive receipts or certificates of deposit in form to be approved by the Committee, specifying the securities deposited and assessments, if any, paid thereon, and all rights of the depositors in respect of such deposits shall be such only as are evidenced by such receipts or certificates, and thereafter the holder of any such receipt or certificate, or of any receipt or certificate issued in lieu thereof or in exchange therefor, shall be subject to this agreement and entitled to have and exercise the rights of the original depositor under the receipt or certificate issued to him in respect of the securities therein mentioned.

The respective receipts or certificates of deposit, and the interest represented thereby, and all rights of the holders in respect of the deposited securities and assess-

ments paid thereon, shall be transferable only subject to the terms and conditions of this Agreement and in such manner as the Committee shall approve, and upon such transfer the transferees and holders of such receipts or certificates of deposit shall for all purposes be substituted in place of the prior holders, subject to this Agreement. All such transferees, as well as the original holders of receipts or certificates of deposit, shall be embraced under the term "Depositors," whenever used herein. Each receipt or certificate of deposit may be treated by the Committee and by the Depositaries as a negotiable instrument, and the holder for the time being may be deemed to be the absolute owner thereof and of all rights of the original depositor of the bond or stock and assessments in respect of which the same was issued, and neither the Depositaries nor the Committee shall be affected by any notice to the contrary? By accepting any such receipt or certificate, every recipient or holder thereof shall thereby become party to this Agreement with the same force and effect as though an actual subscriber hereto under seal.

Depositors must in all cases deposit with the certificates for their stock, or with their bonds or other securities, such transfers, assignments and powers of attorney as may be required by the Committee, in order to vest in said Committee or to enable it to transfer the complete and absolute title to such stock, bonds or other securities, and to coupons or interest installments on deposited bonds; and the depositors respectively agree at any time on demand of the Committee to execute any and all transfers, assignments or writings necessary for vesting complete ownership of the bonds, stocks or other securities deposited hereunder in said Committee or in its nominees, or for the purpose of enabling said Committee to carry out said plan of reorganization.

The Committee shall have power to fix or limit the time within which all or any class of security holders may deposit their securities and become parties to this Agreement as herein provided, and may, in its discretion, and on such terms and conditions as it may see fit, either generally or in special instances extend or renew the time so fixed or limited.

Holders of securities not deposited in the manner herein provided within the times so fixed, limited, extended

or renewed will not be entitled to deposit the same or become parties to this Agreement or share in the benefits thereof and shall acquire no rights thereunder, except by express consent of the Committee and on such terms and conditions as the Committee may prescribe. Depositors of stock who shall fail to pay their assessments, or any installments thereof, within such time as shall be fixed or limited shall cease to be entitled to any benefit hereunder, or in the securities deposited or assessments paid, and shall absolutely forfeit, without right of redemption, their stock, together with any part of the assessments paid thereon, and the Committee may sell the same, or the new securities which may be issued in respect thereof, to any purchaser paying such amount as the Committee may determine, and the proceeds thereof may be used for any of the requirements of carrying out said plan, and as a reserve for the uses of the new company. The Committee may, however, in its discretion, on such terms as it shall see fit, waive by resolution any such forfeiture or failure to pay the assessment within the times allowed.

SECOND. The Depositors hereunder hereby request the Committee to endeavor to carry into practical operation this agreement, including the foregoing plan of reorganization, in its entirety or in part, to such extent and in such manner and with such additions, exceptions and modifications as the Committee shall deem to be for the best interests of the depositors. Each and every Depositor, for himself and not for any other Depositor, does hereby sell, assign, transfer and set over to the said parties of the first part as joint tenants, and not as tenants in common, and to the survivor and survivors of them and to their successors, as a Committee, each and every bond, share of stock, security or obligation or evidence thereof deposited hereunder, and every Depositor hereby agrees that the Committee shall be, and hereby is, vested with all the power and authority of owners of the stock, bonds, securities and obligations deposited hereunder, with full right to transfer the same into its own name, as a Committee, or into the name of any other person or persons whom the Committee may select; to vote thereon at any meeting of stockholders or bondholders or creditors; to use every such stock, bond, security or obligation as fully and to the same extent as the owner or holder thereof, including power to

declare due the principal of any bond or other obligation deposited hereunder, and to revoke any such declaration whenever made; to call or attend, and either in person or by proxy to vote at, any and all meetings of stockholders or bondholders or creditors of any corporation, however convened; to terminate or to seek to dissolve or modify any trust or lease in whole or in part; to apply for the determination of the validity thereof, or for the removal of any trustees or the subtitution of other trustees, or to take any other steps in respect of any trust or lease or under any provision thereof; to purchase at such prices as it shall see fit, or to pay, compromise or settle with the holders of any coupons, notes or other obligations of the Union Pacific Railway Company, or of any or either of the original Companies consolidated therein, or of auxiliary Companies heretofore related thereto, or any Receivers' certificates or obligations issued or which may be issued or incurred by the Receivers thereof, and to apply for that purpose any moneys received from the assessments on the stock, or which may otherwise be received or raised by the Committee; to sell and transfer and to effectively assign any and all coupons on deposited bonds, and any rights, claims or demands for accrued or future interest on such bonds; to give all bonds of indemnity or other bonds, and to charge therewith the securities deposited hereunder or any part thereof, if the Committee shall so deem necessary or expedient in carrying out the purposes hereof; to institute or cause to be instituted or to become parties to any legal proceedings which could be instituted by any Depositor or any corporation, or any officer of any corporation whose stock or bonds or other obligation (or any part thereof) are deposited hereunder, and to participate in, adopt or extend its aid and co-operation in and to any and all legal proceedings now existing; to apply for receivers, or the removal of receivers and the substitution of other receivers, or for the termination of any receivership and the delivery of any property to its owners; to enter into settlement of any litigation now or at any time existing or threatened, in whole or in part, with plenary power to enter into arrangements for decrees, or for facilitating or hastening the course of litigation, or in any way to promote the objects of the Plan and the purposes of the Committee; to do whatever, in the judgment of the Committee,

may be necessary to promote or to procure such joint or separate sales of any property or franchises herein concerned, as the Committee may deem desirable, wherever the same may be situated; to adjourn the sale of any property or franchises, or of any portion or lot thereof at discretion; to bid, or to refrain from bidding, at any sale, either public or private, either in separate lots or as a whole, for any property or franchise or any part thereof, whether or not owned, controlled or covered by any deposited security, including or excluding any particular rolling stock, or other property, real or personal, and at, before, or after, any such sale, to arrange and agree for the resale of any portion of the property which the Committee may decide to sell rather than to retain; to hold any property or franchises purchased by the Committee either in its name or in the name of persons or corporations by it chosen for the purposes of this agreement, and to apply any security deposited hereunder in satisfaction of any bid or towards obtaining funds for the satisfaction thereof; it being understood that the term property and franchises includes any and all railroads, railroad and other transportation lines, leaseholds, stock or other interests in corporations, in which the Union Pacific Railway Company has any interest of any kind whatever, direct or indirect. The amount to be bid or paid by the Committee for any property or franchises shall be absolutely discretionary with it; and, in case of the sale to others of any property or franchise, the Committee may receive out of the proceeds of such sale or otherwise any dividend in any form accruing on any securities held by it.

The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict general powers herein conferred or intended so to be; and it is hereby distinctly declared that it is intended to confer on the Committee, and each depositor hereunder hereby confers on the Committee, in respect of all securities deposited or to be deposited, and in all other respects, any and all powers necessary or expedient, or which the Committee may deem necessary or expedient in or towards carrying out or promoting the purposes of this agreement in any respect, even though any such power be apparently of a character not now contemplated; and the Committee may exercise any and every such power as fully and effectively as if the same

were herein distinctly specified, and as often as, for any cause or reason, it may deem expedient. And it is further understood and agreed that the methods to be adopted for or towards carrying out this agreement shall be entirely discretionary with the Committee.

THIRD. Any moneys paid under or with reference to said plan or this agreement shall be paid over by the Depositaries to the Committee, and shall be applicable for any of the purposes of the plan and agreement as may be most convenient, and as may from time to time be determined by the Committee, whose determination as to the propriety and purposes of any such application shall be final, and nothing in said plan shall be understood as limiting or requiring the application of specific moneys to specific purposes. No liability in respect or in favor of any bonds, stocks, obligations, securities or debts not called for and accepted on deposit hereunder, nor in favor of any lease or contract, is assumed hereunder, or by or for any new company (notwithstanding any mention thereof, or estimate in respect thereto, or reservation of securities to provide therefor, in said plan), nor is any trust in their favor created or impressed upon any deposit or payment hereunder, or upon any securities to be issued under the plan. Any obligation in the nature of floating debt or otherwise against the Union Pacific Railway Company or any property embraced in the plan, either as proposed or as carried out, or any securities held as collateral for any such obligation, may be acquired or extinguished or held by the Committee at such times, in such manner and upon such terms as it may deem proper for the purposes of reorganization, but nothing contained in the plan or in this agreement is intended to constitute, nor shall it constitute, any liability or trust in favor or in respect of any such obligation.

The Committee shall have absolute and complete discretion and latitude in the use, disposition or distribution of all securities of the new Company which are specified in the plan as reserved for purposes therein stated and which are in excess of the securities there embraced in the defined issues for reorganization purposes; and it may use, dispose of, distribute or apportion any of such reserved securities of the new Company in any manner and upon any terms which it may deem expedient or

advisable to promote or accomplish the substantial objects and purposes of the plan and of this agreement. In case of any claim, lien or obligation not herein fully provided for, and affecting the Union Pacific Railway Company, or any property or franchises thereof, the Committee may from time to time make such compromise in respect thereto or provision therefor as it may deem suitable, using therefor any securities not expressly required for settlement with Depositors, but the total amount of new securities to be created, as set forth in the plan, shall not be increased.

FOURTH. The committee may from time to time make contracts or arrangements with any other Committe, person, syndicate, or corporation for the purpose of carrying this agreement, or any of the provisions or purposes thereof, into effect. The Committee may employ counsel, agents and all necessary assistance, and may incur and discharge any and all expenses by the Committee deemed reasonable for the purposes of this agreement. Its selection of the Depositaries named in the plan, and any selections which may be hereafter made by it of further or substituted Depositaries, are hereby authorized, ratified and confirmed. The Committee may prescribe the form of all securities and of all instruments at any time to be issued or entered into under this agreement. It may create and provide for all necessary trusts, and may nominate and appoint trustees thereunder. It may, at public or private sale, or otherwise, dispose of any securities of the new company left in its hands because of any failure to make deposits hereunder. In so disposing of any such new securities thus left in its hands the Committee may use the same or the proceeds thereof for the purpose of carrying out the reorganization in such manner as it may deem expedient and advisable.

FIFTH. The Committee may procure the organization of one or more new companies, or may adopt or use any existing or future companies, and may cause to be made such consolidations, leases, sales or other arrangements, and may make or cause to be made, such conveyances or transfers of any properties or securities acquired by the Committee and take such other steps as the Committee may deem proper for the purpose of creating the new

securities provided for in the plan and carrying out all or any of the provisions thereof.

The Committee may negotiate and agree with any and all companies or persons for obtaining or granting running powers, terminal facilities, exchanges of property, or any other conveniences which it may deem necessary or desirable to obtain or to grant, and may make contracts therefor binding upon such new company; and generally may authorize, ratify and make such purchases, contracts, stipulations or arrangements as will in its opinion operate directly or indirectly to aid in the preservation, improvement, development or protection of any property of the Union Pacific Railway Company, or to prevent or avoid oppositionto, or interference with, the successful execution hereof.

The Committee may proceed under this agreement, or any part thereof, with or without foreclosure, and may exercise any power after foreclosure sale.

Any action contemplated in the plan or agreement to be performed on or after completion of reorganization may be taken by the Committee at any time when it shall deem the reorganization advanced sufficiently to justify such course, and the Committee may defer, as it may deem necessary, the performance of any provision of the plan or agreement, or may refer such performance to the new Company.

SIXTH. The bonds deposited under this agreement, and all Receivers' certificates, coupons and claims purchased or otherwise acquired under this agreement, shall remain in full force and effect for all purposes, and shall not be deemed satisfied, released or discharged by the delivery to the depositors of new securities in respect of their deposits, and no legal right or lien shall be deemed released or waived, but said bonds and other claims, and any deficiency judgment obtained in respect of any of said deposited bonds, and any judgment upon any of such claims, and all liens and equities, shall remain unimpaired, and may be enforced by the Committee or by the new Company or other assigns of the Committee until paid or satisfied in full or expressly released. Neither the Committee nor any bondholders or creditors of the Union Pacific Railway Company, by executing this agreement or by becoming parties thereto, release, surrender or waive any lien,

right or claim in favor of any stockholders or other parties interested in such Company, and all such liens, rights or claims shall vest unimpaired in the Committee, and in the new Company, as its assigns; and any purchase or purchases by or on behalf of the Committee, or the new Company, under any decree for the enforcement of any such lien, right or claim shall vest the property purchased in the Committee or the new Company, free from all interest or claim on the part of such stockholders or other parties.

SEVENTH. The Committee may construe this agreement (including the plan of reorganization), and its construction thereof or action thereunder in good faith shall be final and conclusive.

The Committee may supply any omission or correct any error in the plan or in this agreement, and may modify or depart from any provisions thereof which it shall unanimously deem not to be substantial. In case, however, in the opinion of the Committee, any substantial change or alteration of the plan or of this agreement shall be necessary, such amendment shall be made only in the following manner:

A copy of the proposed change or alteration shall be lodged with each of the Depositaries under this agreement, and a notice thereof shall be advertised in the manner specified in Article Tenth hereof. Thereupon any holders of receipts or certificates of deposit who do not assent to such alteration may, at any time before a date specified in such advertisement, which date shall be at least twenty days after the first publication of such advertisement, withdraw the securities represented by their receipts or certificates of deposit upon surrendering their said receipts or certificates of deposit to the proper Depositaries.

Any interest paid or advanced in purchase of coupons or otherwise to holders of receipts or certificates in respect of deposited bonds represented thereby, or in respect of the new bonds to be issued in exchange therefor under the plan, must, in such case, also be repaid with interest by the holders of such certificates of deposit before the deposited bonds represented by such certificates shall be surrendered in exchange therefor. Any assessments paid on deposited stock so withdrawn or the proceeds of the use thereof, shall be returned to the holders of certificates

of deposit representing such deposited stock, less a *pro rata* share of the expenses and other expenditures and compensation of the Committee incurred up to the date of such withdrawal, which *pro rata* share shall be such as the Committee shall estimate to be properly applicable to the stock so withdrawn. All holders of certificates of deposit who shall not exercise this right to withdraw their securities within said time shall be deemed to have assented to and adopted such change or alteration and shall be bound thereby, and the Committee shall be fully authorized to carry the same into effect with all the powers provided in this agreement.

Wherever the plan or this agreement is referred to in the plan or in this agreement, it shall be deemed to include any change or alteration thereof so adopted.

The plan may be abandoned by the Committee at any time notwithstanding it may have previously declared the same to be operative.

The Committee may at any time abandon such portions and features of the Reorganization as relate to any of the lines, or parts of lines, embraced in said plan, which lines or parts of lines, by reason of failure of holders to deposit securities affecting the same, or for any reason satisfactory to the Committee, it may deem expedient to omit from the Reorganization; and in such event the Committee shall, upon the surrender of the corresponding certificates of deposit and reimbursement of advances in respect to the bonds represented thereby, as above provided in case of withdrawals, return to the holders the deposited bonds secured upon the lines, or portions of lines, thus omitted, and the securities apportioned in the plan to the bonds thus returned shall not be issued.

In case the Committee shall finally abandon the entire plan, after having once declared it operative, the stock, bonds and securities deposited hereunder, or their proceeds, or any stock, bonds, securities, or claims representative thereof, then under the control of the Committee, shall be delivered to the several Depositors in amounts representing their respective interests upon surrender of their respective receipts or certificates. In such case the assessment moneys paid by the depositing stockholders, or any coupons, notes, Receivers' certificates,

or other claims or property acquired therewith, or the proceeds thereof when received, shall be distributed or equitably adjusted among the respective holders of the receipts or certificates of deposit for stock in proportion to the amount of the assessment moneys paid thereon respectively.

EIGHTH. The action of a majority of the members of the Committee, expressed from time to time, either at a meeting or in writing with or without meeting, shall for all purposes constitute the action of the committee, and have the same effect as if assented to by all. It may adopt its own rules of procedure. Any vacancy in the Committee may be filled by appointment in writing by the remaining members or a majority of them, and the Committee may by action of a majority of its members add to its number. All title, rights and powers vested in the Committee hereunder, shall, from time to time, vest in the members of the Committee for the time being, without any further appointment, transfer or assignment whatsoever. In case of absence, any member may vote by any other member as his proxy.

Any member of the Committee may at any time resign by giving notice in writing to a majority of the remaining members, and the Committee may give full release and discharge to any such member, or to the personal representatives of any deceased member. The Committee may act through sub-committees or agents, and may delegate any authority, as well as discretion, to any such sub-committee or agent. The Committee, or the Depositaries, or any present or future member of either, may be member of the Committee or of the Depositaries, and all or any of them may be or become pecuniarily interested in any contracts, property or matters which this agreement concerns, including any syndicate agreement, whether or not mentioned in the plan. Any direction given by the Committee shall be full and sufficient authority for any action of the Depositaries or any Trust Company or other custodian, or for any sub-committee or agent.

NINTH. The Committee undertakes in good faith to endeavor to carry out said Plan and this agreement, but the members of the Committe assume no personal responsibility for the execution thereof. No member of said

Committee shall be liable in any case for the acts of the other members or of any other Committees or of any Depositary, nor for the acts of their agents, sub-committees or employees; nor shall they be personally liable for any error of judgment or mistake of law, but each shall be liable only for his willful misfeasance. No Depositary shall be liable for the acts of the Committee or of any other Depositary hereunder, or of any agents of the Committee or of any Depositary.

The members of the Committee shall be entitled to receive reasonable compensation for their services, and such compensation, with the reasonable expenses of said Committee, shall be paid as part of the expenses of reorganization, the amounts of such compensation and expenses being first approved of by at least four members of the Committee. The accounts of the Committee shall be filed with the Board of Directors of the new Company, and, when audited by said Board of Directors, shall be binding and conclusive on all parties, and the Committee shall be thereby discharged, turning over to the new Company any balance in the hands of the Committee.

The acceptance of new securities by any Depositor shall estop such Depositor from questioning the conformity of such securities, as to character or otherwise, with any provision of said plan, and the acceptance of new securities by a majority in amount of any class of depositors shall so estop all Depositors of such class.

TENTH. All calls for the deposit of bonds and stocks, for the payment of assessments or for the surrender of certificates, all notices fixing or limiting the time for the deposit of securities or the payment of assessments, and all other calls or notices hereunder, shall, except when otherwise provided, be inserted in two or more daily papers of general circulation published in the City of New York, and in one or more daily papers of general circulation published in the cities of London, Boston, Amsterdam and Frankfort, respectively, twice in each week for two successive weeks. Any call or notice whatsoever, when so published by the Committee, shall be taken and considered as though personally served on all parties hereto and upon all parties becoming bound hereby, as of the respective dates of insertion thereof, and such publication shall be

the only notice required to be given under any provision of this agreement.

ELEVENTH. This agreement shall bind the Committee and their successors in office appointed in accordance herewith and the depositors hereunder, their and each of their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the members of the Committee have hereunto signed their names, and all other parties hereto have deposited securities as above set forth.

Q. This is correct, is it not, Mr. Krech?

A. I believe it to be.

Q. You have looked it over, so that you know, have you not?

A. Yes, sir.

Q. Previous to this time, Mr. Krech, were you ever connected with the administration of the receivership of the Union Pacific Railway Company in any way?

A. I was an accountant for the Special Master, before I became Secretary of the Reorganization Committee.

Q. For how long?

A. About a year.

Q. The Special Master in the receivership proceedings?

A. For the Special Master in the receivership proceedings, yes, sir.

Q. Can you give me—can you state the amount, the total amount of each class of securities deposited with the Reorganization Committee, under this agreement, including the common stock of the Union Pacific Railway?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. I cannot at the moment.

Q. Where are the records of the Reorganization Committee?

A. I do not remember.

Q. As Secretary of the Reorganization Committee, what did you do with the records, Mr. Krech?

A. I had charge of the records up to the close of the Committee's —to the time the Committee disbanded; and it is my impression that then they were turned over to the Union Pacific Railway; I am not certain about it.

Q. Hasn't the Mercantile Trust Company those records?

A. They have no records of that.

Q. Haven't you information in the Mercantile Trust Company of the amount of security deposited?

A. Oh, yes; the Mercantile Trust Company has on its own books the amount of the security that was deposited with it.

Q. Haven't they got the amount of securities that were deposited under this plan of reorganization?

A. Yes; they have a record of it.

Q. Will you furnish a statement of that amount?

A. I can furnish that.

Q. I ask Mr. Krech to furnish this and make it a part of of his testimony.

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant; but no part of this objection is made on the ground that the statement is produced as a memorandum and not as the original books.

(The statement was produced and is as follows.)

STATEMENT OF SECURITIES DEPOSITED UNDER THE PLAN AND AGREEMENT OF REORGANIZATION OF THE UNION PACIFIC RAILWAY COMPANY.

| | Outstanding at Date of Plan. | Deposited by the Public. |
|---|---|---|
| Union Pacific 1st Mtge Bonds | $27,229,000 | $14,761,000 |
| Omaha Bridge 8% Bonds | 508,000 | |
| Omaha Bridge 5% Renewal Bonds | 1,056,000 | 734,000 |
| Union Pacific 8% Sinking Fund Bonds | 3,730,000 | 3,722,000 |
| Union Pacific 7% Land Grant Bonds | 7,000 | |
| Kansas Pacific Middle Division 6% Bonds | 4,063,000 | 1,848,000 |
| Kansas Pacific Denver Extension 1st Mtge 6% Bonds | 5,887,000 | 2,983,000 |
| Kansas Pacific Consolidated 6% Bonds | 11,724,000 | 11,573,000 |
| Kansas Pacific 7% Income Bonds | 263,700 | 4,950 |
| Kansas Pacific 7% Income Bonds, Subordinated | 4,011.650 | |

| | | |
|---|---|---|
| Denver Pacific 1st Mtge 7% Bonds | 975,000 | |
| Leavenworth Branch 1st Mtge Bonds | 600,000 | 15,000 |
| Kansas Division and Collateral Bonds | 5,000,000 | |
| Common Stock | 60,868,500 | 60,691,050 |

Q. Was that plan and agreement of reorganization carried out generally?

A. It was.

Q. And this was the basis of the reorganization of the Union Pacific Railway Company?

A. Yes.

Q. I notice by this statement that the capital stock of Union Pacific Railway Company, that was in the hands of the receiver and was reorganized, amounted to $60,868,500. Do you believe that to be a correct statement?

A. I believe so.

Q. Now, for all shares of common stock deposited with the Reorganization Committee, new shares of common stock of the new company, the reorganized company, the Union Pacific Railroad Company, were issued share for share, were they not?

Mr. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. I don't remember the details of the reorganization.

Q. I show you plaintiffs' Exhibit 15; will you refresh your memory from this?

A. Yes; they received share for share of the new common stock, and dollar for dollar in new preferred stock for the amount of the assessment paid.

Q. What was the assessment?

A. Fifteen dollars per share.

Q. That is, they received for the fifteen dollars per share that they were assessed, they received preferred stock of the Union Pacific Company, the Reorganized Company.

A. Yes, sir.

Q. And they received for their common stock share for share in the stock of the new company?

A. Yes.

Q. Was this common stock underwritten?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. The common stock could not have been underwritten.

Q. I mean, the assessment?

A. I believe it was.

Q. Was it all assessed fifteen dollars per share?

A. I believe it was; yes.

Q. And paid in?

A. Paid in.

Q. You can not state from memory, without consulting the books of the Mercantile Trust Company how much of the stock of the Union Pacific Railway Company was deposited—the original stock—with the Reorganization Committee, and exchanged, can you?

A. No, I can not.

Q. Do you now remember whether it was all?

MR. BALDWIN: Objected to as incompetent, immaterial and irrelevant.

A. It was not all.

Q. Well, substantially all?

A. It was, a large percentage.

Q. Well, that that was not deposited was taken by some one else, by the underwriters, and the assessment paid?

A. It could not have been taken by the underwriters.

Q. They paid upon that which the depositors did not pay—on the stock represented by non-depositors, did they not?

A. Yes, sir.

Q. And stock was issued for it, common and preferred?

A. Yes, sir.

Q. In other words, if any stockholder did not deposit his certificates with the Committee and receive the preferred stock for his assessment, and his common stock for his common stock, according to the plan, the underwriting syndicate took that stock, did it not?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. Yes; that is correct.

Q. And made the payments?

A. Yes, sir.

Q. And they also took the new common stock?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. They also took the new common stock.

Q. Mr. Krech, I notice that you—by the papers introduced in evidence here—I notice that you and General Louis Fitzgerald, the president of the Mercantile Trust Company at that time I believe, bid in the property of the Union Pacific Railway Company at the foreclosure sale?

A. We were the purchasing committee.

Q. Representing whom?

A. Representing the Reorganization Committee.

Q. Then, you bought the property for the Reorganization Committee?

MR. BALDWIN: Defendants object, on the ground that it is incompetent, immaterial and irrelevant, and not the best evidence.

A. Yes.

Q. The bid shows that you bought it as purchasing committee or trustees?

A. Yes.

Q. And that was for the Reorganization Committee?

A. It was for the Reorganization Committee, yes.

Q. At whose instance and request did you assign the bid to the Union Pacific Railroad Company?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. I do not remember.

Q. Well, it must have been for the Reorganization Committee, wasn't it?

A. I dare say.

Q. You were acting under their instruction—you did assign the bid to the Union Pacific Railroad Company, the new company, didn't you?

A. I don't remember that we did; I don't remember that.

Q. You don't remember that?

A. No.

Q. Well, there was no independent consideration passed, other than the reorganization, was there?

A. There was none.

Q. Then you must have done that—if you did make the assignment to the Union Pacific Railroad Company, it must have been at the request of the Committee, wasn't it?

Mr. Baldwin: Defendants object, as incompetent, immaterial and irrelevant.

A. Yes; it must have been.

Q. In all that you did in relation to bidding that in and making the assignment, you did it as representing the Reorganization Committee, didn't you?

A. Undoubtedly.

Q. Did the Reorganization Committee cause the new company to be incorporated?

Mr. Baldwin: Defendants object, as incompetent, immaterial and irrelevant.

A. It did; yes, sir.

Q. I mean, by the new company, the Union Pacific Railroad Company, the present company?

A. Yes, sir.

Q. That was provided for in the plan of the Reorganization Committee?

A. That was part of its plan.

(Plaintiffs' Exhibit 16 marked.)

Q. I suppose that was attended to by the counsel—the incorporation of the new company?

A. Yes, sir.

Q. You would not know whether that was the charter or not, would you? (Showing witness plaintiffs' Exhibit 16.)

A. No, I would not.

Mr. Kellogg: I offer in evidence plaintiffs' Exhibit 16, which is a certified copy of the Articles of Association of the Union Pacific Railroad Company, together with a copy of a resolution of the Board of Directors of the Union Pacific Railroad Company passed on January 14th, 1898, accepting the provisions of the Act of the Legislature of the State of Nebraska entitled: "An Act to enable Foreign Corporations to become Domestic Corporations of this State," together with a certificate of the Secretary of State of the State of Nebraska that the charter and the resolution of the Board of Directors of the Union Pacific Railroad Company had been duly filed in the office of the Secretary of State.

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

MR. KELLOGG: I don't suppose there is any question but what it is correct, the objection does not go to its being a copy?

MR. BALDWIN: No.

Plaintiff's Exhibit 16, as offered, being the certified copy of the Articles of Association of The Union Pacific Railroad Company, together with a copy of the Resolution of the Board of Directors of The Union Pacific Railroad Company, passed on January 14, 1898, together with the certificate of the Secretary of State of the State of Nebraska, etc., said Exhibit being more fully described in the offer by Mr. Kellogg is as follows, to-wit:

(PLAINTIFF'S EXHIBIT 16.)

At a meeting of the Board of Directors of the Union Pacific Railroad Company, held on January 14th, 1898, in the City of New York, the following resolution was adopted:

"Resolved, that this Company hereby accepts the provisions of the Act of the Legislature of the State of Nebraska entitled: 'An Act to enable foreign corporations to become domestic corporations of this State,' passed March 19th, 1889, and that the proper officer of this Company be and he is hereby authorized and directed to file a certified copy of this resolution with the Secretary of State of Nebraska."

I, Alexander Millar, Secretary of Union Pacific Railroad Company, do hereby certify that the foregoing is a true copy of a resolution passed by the Board of Directors of the Union Pacific Railroad Company at a meeting of said Board held on January 14, 1898, in the City of New York.

Alex Millar,
Secretary.

Dated January 18th, 1898.

[SEAL]

## Articles of Association of Union Pacific Railroad Company.

State of Utah, County of Salt Lake. } ss.

Know all men by these presents, that we, the undersigned, whose names are hereunto subscribed, do hereby certify and declare that we, have, under and in pursuance of an Act of the legislature of the State of Utah, entitled "An Act to provide for the formation of railroad corporations for the purpose of purchasing, owning, maintaining, operating and extending railroad lines, franchises, properties and appurtenances, authorizing the issue of bonds, making deeds of trust and mortgages, and defining the rights and powers of such corporations," and approved January 22, 1897, associated ourselves together as a corporation for the purpose of buying, owning, maintaining, operating and further extending the railroads, rights, property and franchises hereafter in these articles described, and we further certify and declare that we have adopted, and do hereby adopt the following

### Articles of Association.

Article 1. The corporate name of the corporation hereby formed shall be "Union Pacific Railroad Company." By that name the persons subscribing these Articles of Association and all persons who may from time to time become shareholders in the corporation hereby formed shall have perpetual succession, with power to adopt a common seal, to sue and be sued, to acquire and hold and convey property, to make contracts, to fix and prescribe tariffs and rates of compensation for the carriage of persons and property, and generally to do all acts necessary or proper to carry into effect the powers and purposes of said corporation.

Article 2. Said corporation shall continue in existence for the period of fifty years from the date of the filing of these articles of association in the office of the Secretary of State of the State of Utah.

Article 3. Said corporation shall possess all of the powers, rights and franchises specified, referred to or provided for in these Articles of Association, and also all of

the powers which by said Act above entitled, approved January 22, 1897, corporations formed under and pursuant to the said Act are entitled to have, possess and enjoy, as fully as if all of the provisions of the said Act in this behalf were herein set forth at large, and also all of the powers, rights, privileges and franchises of railroad corporations organized under the laws of the State of Utah, or under the laws of other States or Territories or of the United States, as hereinafter provided.

ARTICLE 4. The amount of the capital stock of the said corporation shall be one hundred and thirty-six million dollars ($136,000,000), which shall be divided into and represented by one million three hundred and sixty thousand (1,360,000) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such capital stock, seven hundred and fifty thousand (750,000) shares of one hundred dollars ($100) each may be issued as preferred stock, and six hundred and ten thousand (610,000) shares of one hundred dollars ($100) each may be issued as common stock.

Such preferred stock shall be entitled in preference and priority over the common stock of said corporation to dividends in each and every fiscal year at such rate not exceeding four per cent. per annum, payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provisions of this article.

ARTICLE 5. The number of directors to manage and control the affairs of this corporation shall be fifteen, and the names and residences of those who shall serve as directors for the first year and until their successors are chosen and qualified are:

Edward Dickinson.....Omaha, Nebraska.
Joseph H. Millard.....Omaha, Nebraska.
John A. Munroe.....Omaha, Nebraska.
Thomas M. Orr .....Omaha, Nebraska.
George Q. Cannon.....Salt Lake City, Utah.
Le Grand Young.....Salt Lake City, Utah.
Alexander Millar.....Boston, Mass.

James G. Harris.....Boston, Mass.
Otto H. Kahn.....New York City, N. Y.
Henry C. Deming.....New York City, N. Y.
Alvin W. Krech.....New York City, N. Y.
Felix M. Warburg.....New York City, N. Y.
Ernest R. Adee.....New York City, N. Y.
George H. Squire.....New York City, N. Y.
Lawrence Greer.....New York City, N. Y.

ARTICLE 6. The said corporation is organized and formed for, and shall have the power, to purchase, own, hold, enjoy, maintain, operate and further extend the railroad, property, rights and franchises, or any part thereof, belonging to The Union Pacific Railway Company, a corporation formed by Articles of Union and Consolidation between The Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway & Telegraph Company, which Articles of Union and Consolidation bear date January 24, 1880, and were filed in the Department of the Interior of the United States at Washington, in the District of Columbia, on or about January 26, 1880.

The said corporation hereby formed shall have the power to acquire, possess and enjoy the lands and land grants, or any part thereof, and all rights with respect thereto of the said The Union Pacific Railway Company or any or either of its constituent companies; And the said corporation hereby formed shall have power to construct or acquire by lease, purchase, consolidation, ownership of capital stock, or otherwise, branches, extensions and connecting or auxiliary lines within or without this State as the board of directors may from time to time deem expedient and as may be authorized by law.

The termini of the said railroad which the said corporation hereby formed is authorized to acquire, enjoy and operate, as now constructed, and the States and counties through which the said railroad passes are as follows, to-wit:

Said railroad extends from a point about five miles west of Ogden, in the County of Weber, in the State of Utah, easterly through said county and said city of Ogden therein, and through the Counties of Davis, Morgan and Summit, in said State of Utah, and

the Counties of Uintah, Sweetwater, Carbon, Albany and Laramie, in the State of Wyoming; and through the County of Sedgwick, in the State of Colorado, and through the counties of Kimball, Cheyenne, Deuel, Keith, Lincoln, Dawson, Buffalo, Hall, Merrick, Platte, Colfax, Dodge, Sarpy and Douglas, in the State of Nebraska, to Council Bluffs, in the County of Pottawattamie, in the State of Iowa; and from Cheyenne, in the County of Laramie, in the State of Wyoming, southerly through said county and the Counties of Weld and Arapahoe, in the State of Colorado, to Denver, in said last-mentioned county and state; and from said Denver easterly through the Counties of Arapahoe, Elbert, Lincoln and Cheyenne, in the State of Colorado, and the Counties of Wallace, Logan, Gove, Trego, Ellis, Russell, Ellsworth, Saline, Dickinson, Geary, Riley, Pottawatomie, Shawnee, Jefferson, Douglas, Leavenworth and Wyandotte, in the State of Kansas, to Kansas City, in the County of Jackson, in the State of Missouri: the said railroad above described being the railroad, which by said Articles of Union and Consolidation dated January 24, 1880, became the railroad and property of said The Union Pacific Railway Company.

Together with such branches and extensions of said railroad or railroads, or any part thereof, as the company hereby formed may from time to time be authorized by law to construct, operate, acquire and maintain.

ARTICLE 7. The corporation hereby formed shall be vested with and entitled to exercise and enjoy all the powers, rights, privileges and franchises which at the time of the acquisition of the said railroads by the corporation hereby formed, or at the time of the sale thereof, under judicial proceedings, or in the enforcement of mortgage or other liens or at private sale, belonged to or were vested in The Union Pacific Railway Company or in the corporation or corporations last owning the said railroads and properties, as well as all the rights, privileges and franchises of railroad corporations organized under the laws of the State of Utah, including the aforesaid recited Act of the legislature of the State of Utah, approved January 22, 1897; and said corporation shall also possess in each State or Territory as respects its railroads or any branches or extensions thereof situate therein, all of the powers, rights, privileges and franchises of railroad corporations org-

ized under the laws of such State or Territory or of the United States.

ARTICLE 8. The corporation hereby formed may construct or acquire by lease, purchase, consolidation, ownership of capital stock, or otherwise, branches, extensions and connecting lines within or without this State, and for such purposes, or any of them, may from time to time create and issue its stock, common or preferred, or both, and execute bonds and mortgages for such sum or sums and payable at such times and places and drawing such rate of interest as the directors may deem proper, and may use such stock and bonds, or any part thereof, in payment of property to be purchased by such corporation or the improvement or extension thereof upon such terms as the directors may deem expedient, may guarantee the bonds or obligations of extension, branch, connecting or auxilary lines of railroad, and in exercising its corporate powers, it may make such leases, purchases, contracts, conveyances, consolidations and do such acts as the directors may deem necessary or expedient not inconsistent with these Articles or with the Constitution and laws of the State of Utah. The company hereby formed may also consolidate with or merge itself into any other railway company or companies in this or other States or Territories pursuant to law. It may also from time to time amend these Articles of Association, by filing amended Articles of Association, increasing the capital stock, or otherwise, agreeably with law, enlarging or changing the powers of the corporation hereby formed.

ARTICLE 9. The Board of Directors of said corporation may from time to time adopt and change by-laws not inconsistent with the provisions of these Articles or the Constitution and laws of the State of Utah. Said by-laws shall provide for annual elections of directors by the stockholders and for the election by the directors of a President and Vice-President and for the election or appointment of such other officers as shall be prescribed in such by-laws. Shareholders' or other corporate meetings may be held at such place or places in the United States as the by-laws may prescribe.

ARTICLE 10. Stockholders shall not be individually liable for the debts of the corporation.

This corporation does not assume and shall not be liable for the debts, obligations or liabilities of the Union Pacific Railway Company or of any corporation or company whose powers, rights, privileges, railroads and franchises it shall purchase or acquire.

IN TESTIMONY WHEREOF, we have hereunto subscribed our names this 23rd day of June, 1897.

EDWARD DICKINSON,
OTTO H. KAHN,
H. C. DEMING,
ALVIN W. KRECH,
FELIX M. WARBURG,
E. R. ADEE.
GEO. H. SQUIRE,
LAWRENCE GREER,
ALEXANDER MILLAR,
JAMES G. HARRIS.

State of New York,
City and County of New York, } ss.

On this twenty-third day of June, 1897, before me, the undersigned notary public, personally appeared Edward Dickinson, Otto H. Kahn, Henry C. Deming, Alvin W. Krech, Felix M. Warburg, Ernest R. Adee, George H. Squire and Lawrence Greer to me known and known to me to be the identical persons named and described in and who subscribed the foregoing instrument, and they acknowledged to me that they signed the foregoing Articles of Association for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.]

GEO. V. TURNER,
Notary Public,
N. Y. Co. No. 44.

Commonwealth of Massachusetts,
County of Suffolk, } ss.:

On this 24th day of June, 1897, before me, the undersigned, a notary public, personally appeared Alexander Millar and James G. Harris, to me known and known to me to be the identical persons named and described in and who subscribed the foregoing instrument, and they

acknowledged to me that they signed the foregoing articles of association for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above named.

John H. Appleton,
Notary Public.

[SEAL]

UNITED STATES OF AMERICA.

State of Utah.
Office of the
Secretary of State. } ss.

I, James T. Hammond, Secretary of State of the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the Articles of Association of Union Pacific Railroad Company, filed in my office on the first day of July, A. D. 1897 as the same appears on file in my office.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of Utah, this 7th day of January, A. D. 1898.

J. T. Hammond,
Secretary of State.

[SEAL]

UNITED STATES OF AMERICA.

State of Nebraska.

OFFICE OF SECRETARY OF STATE.

State of Nebraska
Office of
Secretary of State

I, W. F. Porter, Secretary of State of the State of Nebraska, do hereby certify that I have carefully compared the foregoing copy of The Articles of Association of

UNION PACIFIC RAILROAD COMPANY

Filed in my office on the 21st day of January, A. D. 1898, with the original on file in this office, and that the same is a true and perfect copy of said Articles of Association as aforesaid.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this 21st day of January, in the year of our Lord One Thousand Eight Hundred and Ninety Eight, of the Independence of the United States the One Hundred and 22nd, and of this State the 31st.

W. F. Porter,
Secretary of State.

[SEAL]

Endorsed:

Copy of Articles of Incorporation Union Pacific Railroad Company.

State of Nebraska, }
Secretary's Office. }

Received and filed for record this 21st day of Jan'y, A. D., 1898, and recorded in Book "C" Railroad Incorporations at page 445.

W. F. Porter,
Secretary of State.

Fees $13,600.00 Paid Jan. 21, 1898.

Q. After the reorganization, did you occupy any official position with the new company?

A. I believe I was Vice-President for a short period; only for the purpose of signing securities, I think; something of that sort.

Q. Well, were you made Vice-President of the new company at the request of the Reorganization Committee?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. I don't think so.

Q. You were merely for convenience in signing securities?

A. Yes.

Q. You don't remember how long you were vice-president?

A. Less than a year.

Q. Were you the first Vice-President of the new company?

A. I think so.

Q. Do you remember who was elected President of the new company?

A. I don't remember who its first President was; I rather think Mr. Burt was its first President; I don't remember.

Alexander Millar, being called and sworn as a witness, testified as follows:

DIRECT EXAMINATION.

By Mr. Kellogg:

Q. What is your full name?

A. Alexander Millar.

Q. What position do you occupy with the Union Pacific Railroad Company?

A. Secretary.

Q. Have you been Secretary ever since its reorganization?

A. Yes, sir.

Q. Are you also Comptroller?

A. No.

Q. Were you ever Comptroller?

A. No, sir.

Q. Or Assistant Comptroller?

A. No, sir.

Q. You have no other position than that of Secretary?

A. No.

Q. Did you ever occupy a position with the Union Pacific Railway Company?

A. Yes, sir.

Q. What position?

A. I was Secretary, from 1888 to about the time of the reorganization.

Q. Prior to that time, did you have any official posision with the Union Pacific Railway?

A. Yes, sir; I had been Assistant Secretary for some time.

Q. When did you first commence your service with the Union Pacific Railroad Company?

A. In November, 1872.

Q. Were you not Assistant Comptroller, or connected with the Comptroller's office, from the year 1872 down to the receivership?

A. I was Assistant Comptroller during a part of the receivership; I think during the last year or two; I don't recall the exact term. That was for the receivers.

Q. During the years that you were connected with the Union Pacific Railroad Company and the reorganized

Union Pacific Railway Company, do you know whether they charged bridge tolls or not?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. Bridge tolls—yes, sir; they did; I so understand.

Q. Have you in your office any books that will show the amount of bridge tolls collected at any time, either by the Union Pacific Railroad Company organized under the Act of Congress or the consolidated Union Pacific Railway Company, or the receivers during their administration?

A. No, sir.

Q. You have no such books?

A. No, sir.

Q. Those figures would not be here in New York?

A. No, sir.

Q. They would be in Omaha?

A. Yes.

Q. Do you know the amounts of the original bridge bonds issued under the bridge mortgage of 1872?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. As a matter of recollection, $2,500,000 I think; my recollection is that it is $2,500,000, but I am not sure.

Q. What amount of bonds were issued by the Union Pacific Railway Company under the renewal bridge mortgage?

MR. BALDWIN: Defendants object, as incompetent immaterial and irrelevant.

A. I don't recall the amount of that mortgage, Mr. Kellogg.

Q. Can you state now how many bonds were issued under the renewal bridge mortgage of 1885?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. To my very best recollection, the company disposed of $734,000 of those bonds.

Q. How many were issued and delivered to the Union Pacific Company and held by them?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. A total of $1,056,000, of which $322,000 were delivered to the receivers at the time the company went into the hands of receivers.

Q. What became of those bonds that were delivered to the receivers; what did the receivers do with them?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. I have no recollection of that whatever.

Q. Have you any records that would show?

A. No, sir.

Q. Where would those records be?

A. I think the receivers' records were left with the receivers to be disposed of under the orders of the court; what finally became of them I don't know.

Q. Mr. Millar, can you state or furnish the information from which you can state, who the first Board of Directors of the Union Pacific Railroad Company, the reganized company, were?

A. I can ascertain and give the information to you.

(The information was subsequently furnished by Mr. Millar, and is as follows):

List of first Board of Directors of Union Pacific Railroad Company and date elected:

The first elected Board of Directors of Union Pacific Railroad Company, elected October 11, 1898, were as follows:

Oliver Ames,
George Q. Cannon,
John W. Doane,
George J. Gould,
Marvin Hughitt,
Otto H. Kahn,
Winslow S. Pierce,
James Stillman.
Horace G. Burt,
T. Jefferson Coolidge, Jr.,
Louis Fitzgerald,
Edward H. Harriman,
Henry B. Hyde,
Roswell Miller,
Jacob H. Schiff,

Q. There was a temporary board provided for in the articles of incorporation, was there not?

A. There was; yes, sir.

Q. Now, who was Mr. Edward Dickinson?

MR. BALDWIN: Objected to, as incompetent, immaterial and irrelevant.

A. Mr. Dickinson was an officer of the receivers in Omaha; I don't recall what.

Q. He was General Manager?

A. I can not recall what his office was.

Q. He was also in the employ of the Railway Company at the time of the receivership, wasn't he?

A. I think so, yes, sir.

Q. Who was John A. Munroe?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. John A. Munroe was connected with the traffic department of the receivers of the Union Pacific.

Q. And of the Railway Company before the receivers?

A. I think so, but I am not sure of that fact.

Q. And you, Mr. Alexander Millar, were also one of the temporary Board of Directors?

A. Yes, sir.

Q. Who was Mr. James G. Harris?

A. He was Treasurer of the Union Pacific Railway Company, and of the receivers.

Q. And of the new company?

A. Yes, sir, for a short time.

Q. He was, for a short time after its reorganization, Treasurer of the reorganized company?

A. Yes, sir.

Q. Who was Mr. Thomas M. Orr?

MR. BALDWIN. Defendants object, as incompetent, immaterial and irrelevant.

A. Mr. Orr was located in Omaha; I don't know whether he was then in the service of the company or not; he had been prior to the receivership.

Q. Well, he is now, isn't he?

A. Yes, sir, he is in the service of the present company.

Q. Assistant to the President, isn't he, or something of that nature?

A. He is a clerk in the President's office; he is not an officer of the company at this time.

Q. Who is Mr. Otto H. Kahn?

A. He is a banker in New York.

Q. A member of the firm of Kuhn, Loeb & Company?

A. Yes, sir.

Q. They were the bankers of the Reorganization Committee?

A. I don't know, sir.

Q. Henry C. Deming—who was Mr. Deming?

A. Mr. Deming is a New Yorker.

Q. Vice-President of the Mercantile Trust Company?

A. Yes; I think he was.

Q. Mr. Alvin W. Krech was Secretary of the Reorganization Committee?

A. Yes, sir.

Q. Do you know who Mr. Felix M. Warburg is?

A. I think he is a banker.

Q. Connected with Kuhn, Loeb & Company?

A. Yes; connected with that firm.

Q. Mr. Ernest R. Adee was Secretary of the Mercantile Trust Company at that time, was he not?

A. I don't know; I think he was connected with that company.

Q. And Mr. Lawrence Greer was one of the counsel for the receivers?

A. Not to my knowledge; Mr. Greer was living in New York.

Q. Do you know who Mr. George H. Squire was?

A. He was Secretary of the Mercantile Trust Company.

Q. Now, can you give us the information who was elected the first Board of Directors for this temporary board?

A. Yes, sir; I can furnish you that.

Q. And when they were elected?

A. Yes, sir.

Q. Who are the first Board of Directors?

MR. BALDWIN: Defendants object, as incompetent, irrelevant and immaterial.

A. I will have to give you the names; I cannot recall them correctly.

Q. Will you also state who were the first officers of the Union Pacific Railroad Company, the reorganized company?

MR. BALDWIN: Defendants object, as incompetent, immaterial and irrelevant.

A. I will give them to you; how far down the list do you want?

Q. Well, the first year?

DEFENDANT'S COUNSEL: Do you mean the officers in New York, Mr. Kellogg?

MR. KELLOGG: Both in New York and Omaha; that is, the principal officers, you know.

(The information was subsequently furnished by Mr. Millar, and is as follows:)

The first officers of the company, elected December 8, 1897, were as follows:

Winslow S. Pierce, Chairman of the Board, President and General Counsel.

A. W. Krech, Vice-President.

Alex. Millar, Secretary.

James G. Harris, Treasurer.

On December 22, 1897, Mr. Pierce resigned as President, and was succeeded by Mr. Horace G. Burt.

Wm. D. Cornish was elected Vice-President October 27, 1898, and still occupies that position.

On the same date Wm. R. Kelly was appointed General Solicitor and Erastus Young General Auditor, which positions they still hold.

It is admitted, that if Winslow S. Pierce were present, he would testify as follows, subject to the objection as to the incompetency, immateriality, and irrelevancy of said testimony, and it is agreed that it can be considered with the same weight and effect as if he were personally present and testified as follows:

That he was counsel for the complainants in the foreclosure case of *Dexter et al., vs. Union Pacific Railway Company*;

That he was also counsel for the Reorganization Committee;

That as counsel for the Reorganization Committee, he organized or superintended the organization of the reorganized company, the Union Pacific Railroad Company;

That he was one of the first Board of Directors elected of that company, and was also the first Chairman of the Board of the Union Pacific Railroad Company, and was such Chairman until that office was abolished on December 1, 1898, when his term ended;

That during the receivership of the Union Pacific Railway Company, he was familiar with the proceedings

in said cause, wherein the effect of the Saunders deed and its provisions upon the title of the Union Pacific Railway Company to the lands therein described was in question, and the nature of the title of said company under said deed was under question, and also with the proceedings in the District Court of Douglas County, Nebraska, in the suit wherein Ernest Stuht and John D. Howe were plaintiffs and the City of Omaha and others were defendants, together with the decree entered in said last-mentioned cause;

That Mr. Pierce has, since its organization, been the General Counsel of the Union Pacific Railroad Company, the reorganized company.

MR. BALDWIN: All the above and foregoing evidence is objected to on the part of the respondents, as incompetent, immaterial and irrelevant.

It is admitted that if Grenville M. Dodge were present he would testify as follows, subject to objection as to the incompetency, immateriality and irrelevancy of said testimony, and it is agreed that it can be considered with the same weight and effect as if he were personally present and testified as follows:

That he was Chief Engineer of the old Union Pacific Railroad Company organized under the Act of Congress;

That the line of road of said company from a point in Section 10, on the west bank of the Missouri River in Omaha, to Promontory Point, Utah, was constructed and in operation in 1869, May 10th;

That the said company was without funds with which to build a bridge across the Missouri River, and thereupon, at the request of the said Union Pacific Railroad Company and on its behalf, he, said Grenville M. Dodge, with others, went to Washington and procured the passage of the Act of Congress entitled "An act to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa," which Act was approved February 24th, 1871, being the Act set forth in the bill of complaint herein at pages 9, 10 and 11 thereof.

MR. BALDWIN: All of which foregoing evidence is objected to on the part of the respondents as incompetent, immaterial and irrelevant.

At this point the further taking of testimony was adjourned until 2 o'clock P. M.

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May 11th, 1903.

Two o'clock P. M., met pursuant to adjournment; same appearances as before; and further proceedings were had as follows:

MR. KELLOGG: I offer in evidence a certified copy of the resolution of the Board of Directors of the Mason City and Fort Dodge Railroad Company accepting the provisions of the statute of the State of Nebraska by which the said corporation becomes a domestic corporation of the State of Nebraska.

It is agreed that this certified copy shall be considered as the original and received in all respects as if it were the original record book of the company.

MR. BALDWIN: Objected to as incompetent, immaterial and irrelevant; there being no objection on the ground that it is a copy instead of the original record book.

The said resolution was read in evidence as follows:

EXTRACTS FROM THE MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF THE MASON CITY & FORT DODGE RAILROAD COMPANY, HELD AT THE OFFICE OF THE COMPANY AT 31 NASSAU STREET, IN THE CITY OF NEW YORK ON THE 7TH DAY OF JANUARY, 1903.

"RESOLVED, That the Mason City & Fort Dodge Railroad Company has accepted, and does hereby accept, the provisions of the Act of the Legislature of the State of Nebraska, entitled "An Act to enable foreign corporations to become domestic corporations of this State," approved March 19th, 1889.

"RESOLVED FURTHER, That for the purpose of enabling it to become a domestic corporation of the State of Nebraska, the Mason City & Fort Dodge Railroad Company does hereby direct that a true copy of its charter and

Articles of Association, together with a certified copy of this resolution, be filed with the Secretary of the State of Nebraska."

THIS CERTIFIES, That the foregoing is a true copy of a resolution passed by the Board of Directors of the Mason City Fort & Dodge Railroad Company, at a meeting held in the City of New York on the 7th day of January, 1903, as the same appears on record in the minutes of said meeting.

IN WITNESS WHEREOF, The Mason City & Fort Dodge Railroad Company has caused this certificate to be signed by its Vice President and Secretary this 11th day of May, 1903.

Mason City & Fort Dodge Railroad Company,
[SEAL] By Arthur S. Fairchild,
Vice President.

Homer S. Pace,
Secretary.

MR. KELLOGG: I offer in evidence a certified copy of a resolution of the Board of Directors of the Mason City and Fort Dodge Railroad Company

It is agreed that this certified copy shall be considered as the original and received in all respects as if it were the original record book of the company.

MR. BALDWIN: Objected to as incompetent, immaterial and irrelevant; there being no objection on the ground that it is a copy instead of the original record book.

The said resolution was read in evidence as follows:

EXTRACT FROM THE MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF THE MASON CITY & FORT DODGE RAILROAD COMPANY, HELD AT THE OFFICE OF THE COMPANY AT 31 NASSAU STREET, IN THE CITY OF NEW YORK, ON THE 28TH DAY OF OCTOBER, 1902.

"RESOLVED, That the officers of the Mason City & Fort Dodge Railroad Company be, and hereby are, authorized and directed to make the following offer to, and demand upon, the Union Pacific Railroad Company, to-wit:

'To the Union Pacific Railroad Company:

Please take notice that the undersigned, the Mason City & Fort Dodge Railroad Company, a railroad corporation organized and created under the laws of the State of Iowa, and being engaged in the construction of a line of railroad which will terminate at Council Bluffs, in the State of Iowa, which line of railway is now so nearly completed that it will be able to run trains thereon within a few months, hereby demands to be admitted into the full, equal and joint possession and use of your main and passing tracks now located and established, or which may hereafter be located and established, between the terminus of said tracks in the City of Council Bluffs, in the State of Iowa, to a line drawn at a right angle across said tracks within one and one-half miles southerly of your passenger station at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri River between the City of Council Bluffs and Omaha; connection with the union depot tracks in Omaha; the side or spur tracks leading from the main track to the lower grade of your sidings and spur tracks in Omaha, and such extensions as may be hereafter made; and side tracks in Omaha on which to receive from or deliver to said Mason City & Fort Dodge Railroad Company freight that may be handled through the warehouses or switched by you; the connections with the Union Stock Yards tracks in South Omaha; and conveniently located grounds in South Omaha on which said Mason City & Fort Dodge Railroad Company may construct, maintain and exclusively use a track or tracks, aggregating three thousand (3,000) feet in length, for the storage of cars and other purposes, upon as favorable terms and conditions as you have heretofore granted the use of said property to the Chicago, Milwaukee & St. Paul Railway Company and the Chicago, Rock Island & Pacific Railway Company; and the Mason City & Fort Dodge Railroad Company hereby offers to enter into a contract with the Union Pacific Railroad Company similar to the contracts made and entered into by the Chicago, Milwaukee & St. Paul Railway Company and the Chicago, Rock Island & Pacific Railway Company for the use of said property, and offers to pays the consideration therein named.

'In addition, the said Mason City & Fort Dodge Railroad Company demands to be admitted into the full, equal and joint possession and use of the Union passenger station in the City of Omaha, and all the tracks and facilities connected therewith, upon the terms and conditions stated in a contract between the Union Pacific Railroad Company, the Chicago & Northwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company and the Chicago, Milwaukee & St. Paul Railway Company, bearing date September, 1898, and a supplemental contract between said parties dated August 1st, 1899, which contracts the Mason City & Fort Dodge Railroad Company hereby offers to sign and become a party to as required therein, and to pay the consideration therein named.

'The Mason City & Fort Dodge Railroad Company claims that the above property constitutes the bridge and approaches which you were authorized to construct under and by virtue of an Act of Congress entitled "An Act to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa," approved February 24th, 1871; and that Act of Congress entitled "An Act to authorize the construction of certain bridges and establish them as post roads" approved July 28th, 1866; and that under said Acts of Congress, and under that certain contract entered into by and between the Union Pacific Railroad Company, the City of Omaha, and the County of Douglas, Nebraska, dated the first day of January, 1872, which said contract is contained in the body of a deed made by Alvin Saunders, Trustee, to the Union Pacific Railroad Company, and recorded in the office of the Register of Deeds in the County of Douglas, State of Nebraska, in Book 12 on page 220, on the 2nd day of February, 1872, the Mason City & Fort Dodge Railroad Company is entitled to the use thereof herein demanded.

"The Mason City & Fort Dodge Railroad Company hereby offers to pay for the use of such property a reasonable consideration as provided in said Acts of Congress and in the contract between the Union Pacific Railroad Company the City of Omaha and the County of Douglas, Nebraska, aforesaid.'

"Resolved Further, That the said officers are hereby fully authorized to negotiate with the said Union Pacific

Railroad Company for the use of said property and facilities described in said demand, or any part thereof, and to make, execute and deliver such contracts with the Union Pacific Railroad Company as the said officers may deem best, and are especially authorized to execute in the name of the said Mason City & Fort Dodge Railroad Company a certain contract for the use of the Union passenger station in the City of Omaha, and all the tracks and facilities connected therewith, which said contract was made and entered into by the Union Pacific Railroad Company, the Chicago & Northwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company and the Chicago, Milwaukee & St. Paul Railway Company, bearing date September, 1898, and the supplemental contract between said parties dated August 1st, 1899.

"RESOLVED FURTHER, That said officers be, and hereby are, authorized and directed to enforce the demand of the said Mason City & Fort Dodge Railroad Company, and to bring such suit or suits against the said Union Pacific Railroad Company, or any other person or corporation, as may be necessary to enforce the said rights, and to take such steps as by the said officers may be deemed wise.

THIS CERTIFIES, That the foregoing is a true copy of a resolution passed by the Board of Directors of the Mason City & Fort Dodge Railroad Company, at a meeting held in the City of New York on the 28th day of October, 1902, as the same appears on record in the minutes of said meeting.

IN WITNESS WHEREOF, The Mason City & Fort Dodge Railroad Company has caused this certificate to be signed by its Vice-President and Secretary this 11th day of May, 1903.

Mason City & Fort Dodge Railroad Company,
[SEAL] By Arthur S. Fairchild,
Vice-President.

Homer S. Pace,
Secretary.

It is admitted, that if Herman Kountze were present, he would testify as follows, subject to objection as to the incompetency, immateriality and irrelevancy of said testi-

mony, and it is agreed that it shall be considered with the same weight and effect as if he were personally present and testified as follows:

That he is a resident of the City of Omaha, and has been such resident since prior to 1865;

That he is personally familiar with the proceedings whereby the City of Omaha voted $200,000 of bonds and issued the same for the purpose of procuring and donating to the Union Pacific Railroad Company the grounds for the terminals and depot grounds and bridge approaches in the City of Omaha;

That the $200,000 of bonds above mentioned were voted by the City of Omaha and were sold and the proceeds of said bonds were used in the purchase of the lands which are described in and conveyed by the deed from Alvin Saunders, Trustee, to the Union Pacific Railroad Company, dated January 20, 1872, the same being in evidence in this case.

MR. BALDWIN: All of which foregoing evidence is objected to on the part of the respondents as incompetent, immaterial and irrelevant.

At this time, by agreement of parties, an adjournment was taken until June 3, 1903, to the office of the Law Department of the Union Pacific Railroad Company, Omaha, Nebraska.

Office of the Law Department of Union Pacific Railroad Company, Omaha, Nebraska, June 3, 1903.

Met pursuant to adjournment.

Present and appearing for Complainant, F. B. Kellogg and W. D. McHugh.

Present and appearing for defendant, John N. Baldwin.

Proceedings were as follows:

MR. KELLOGG: Complainants now offer in evidence the Bill of Complaint in the case of F. Gordon Dexter and Oliver Ames second vs. The Union Pacific Railway Company, et al; also the Answer of the Central Trust Company, Trustee of the Renewal Bridge Mortgage, thereto; Also the

answer of Morgan and Atkins, Trustees of the First Bridge Mortgage; Also the Order of Judge Sanborn referring the issues thus framed to William D. Cornish, Master; Also the motion of dismissal and the Order of Dismissal dismissing the Bill of Complaint as to the Chicago, Rock Island & Pacific Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, et al.

JUDGE MCHUGH: Complainants offer in evidence also the Report of the Special Master upon the issues framed by the foregoing pleadings; Also the Exceptions filed to said Report; Also the Order overruling said Exceptions; Also the Final Decree of the Court in the foregoing case.

It is agreed by and between the parties that the copy of the Bridge Mortgages attached to the answers of the above mentioned Trustees need not be repeated and set forth in the foregoing answers, for the reason that they are attached to the Bill of Complaint herein.

It is admitted that the papers offered in the foregoing offer on behalf of the complainants are the original papers as specified.

MR. BALDWIN: To each and every of the papers as specified in the above offer, the defendant objects for the reason that the same is incompetent, irrelevant and immaterial.

The papers as specified in the above offer, being read in evidence, are as follows, in the order of their enumeration, respectively:

IN THE UNITED STATES CIRCUIT COURT, FOR THE DISTRICT OF NEBRASKA.

No. 48-R.

F. Gordon Dexter and Oliver Ames, Second, Trustee,

Complainants,

vs.

The Union Pacific Railway Company; The United States of America; The Union Trust Company of New York; J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee; The Central Pacific Railroad Company; The Southern Pacific Company; The St. Joseph & Grand Island Railroad Company; The Kansas City & Omaha Railroad Company; The Oregon Railway and Navigation Company; The Oregon Short Line & Utah Northern Railway Company; The Union Pacific, Lincoln & Colorado Railway Company; The Chicago & Northwestern Railway Company; The Omaha & Republican Valley Railway Company; The Chicago, St. Paul, Minneapolis & Omaha Railway Company; The Kearney & Black Hills Railway Company; Frank H. Peavy, E. C. Michener and Charles T. Peavey, co-partners under the firm name and style of F. H. Peavy & Company; The Union Pacific, Denver & Gulf Railway Company; The Chicago, Milwaukee & St. Paul Railway Company; The Salina & Southwestern Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Chicago, Kansas & Nebraska Railway Company; The Missouri Pacific Railway Company; S. H. H. Clark, Oliver W Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane,

Defendants.

**Bill for Foreclosure of First Mortgage Union Pacific Railroad Co.**

Filed January 21, 1895.

WINSLOW S. PIERCE,
195 Broadway,
New York City,
R. S. HALL,
Omaha, Neb.,
*Solicitors and of Counsel for Complainants.*

## BILL OF COMPLAINT.

*To the Honorable, the Judges of the Circuit Court of the United States for the District of Nebraska, in the Eighth Circuit, sitting in equity:*

F. Gordon Dexter and Oliver Ames, Second, citizens and residents of the State of Massachusetts, bring this their bill of complaint against The Union Pacific Railway Company, a corporation organized and existing under the laws of the United States of America; the United States of America; the Union Trust Company of New York, a corporation organized and existing under the laws of the State of New York; J. Pierpont Morgan, a citizen and resident of the State of New York, and Edwin F. Atkins, a citizen and resident of the State of Massachusetts, trustees; the Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York, trustee; the Central Pacific Railroad Company, a corporation organized and existing under the laws of the State of California; the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky; the St. Joseph & Grand Island Railroad Company, a corporation organized and existing under the laws of the State of Kansas; the Kansas City & Omaha Railroad Company, a corporation organized and existing under the laws of the State of Nebraska; the Oregon Railway & Navigation Company, a corporation organized and existing under the laws of the State of Oregon; the Oregon Short Line & Utah Northern Railway Company, a consolidated corporation, organized and existing under the laws of the States of Wyoming, Idaho, Oregon, Montana and the Territory of Utah; the Union Pacific, Lincoln & Colorado Railway Company, a consolidated corporation, organized and existing under the laws of the State of Kansas; the Chicago & Northwestern Railway Company, a corporation organized and existing under the laws of the State of Wisconsin; the Omaha & Republican Valley Railway Company, a corporation organized and existing under the laws of the State of Nebraska; the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation organized and existing under the laws of the State of Wisconsin; the

Kearney & Black Hills Railway Company, a corporation organized and existing under the laws of the State of Nebraska; Frank H. Peavy, E. C. Michener and Charles T. Peavy, co-partners under the firm name and style of F. H. Peavy & Company, and citizens and residents of the State of Minnesota; the Union Pacific, Denver & Gulf Railway Company, a consolidated corporation, organized and existing under the laws of the States of Colorado and Wyoming; the Chicago, Milwaukee & St. Paul Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, and a domestic corporation of the State of Nebraska; the Salina & Southwestern Railway Company, a corporation organized and existing under the laws of the State of Kansas; the Chicago, Rock Island & Pacific Railway Company, a corporation organized and existing under the laws of the States of Illinois and Iowa; the Chicago, Kansas & Nebraska Railway Company, a corporation organized and existing under the laws of the States of Kansas and Colorado; the Missouri Pacific Railway Company, a corporation organized and existing under the laws of the State of Missouri, and S. H. H. Clark, a citizen and resident of the State of Missouri; Oliver W. Mink, a citizen and resident of the State of Massachusetts; E. Ellery Anderson and Frederic R. Coudert, citizens and residents of the State of New York, and John W. Doane, a citizen and resident of the State of Illinois.

And thereupon humbly complaining, your orators show unto your Honors as follows:

First. That your orators F. Gordon Dexter and Oliver Ames, Second, are citizens and residents of the State of Massachusetts.

That the defendant The Union Pacific Railway Company is a corporation created by and existing under certain laws of the United States, to-wit: an act of Congress entitled "an act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the government the use of the same for postal, military and other purposes," approved July 1st, 1862; also an act of Congress amendatory thereof, approved July 2d, 1864, and other acts of the Congress of the United States, amendatory thereof and supplemental thereto. That the said Union Pacific Railway Company was formed

on or about the 24th day of January; 1880, under and by virtue of the powers and provisions contained in said several acts of the Congress of the United States, by the consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, each of said three companies being named and described in the Congressional legislation embraced in said acts; and the said Union Pacific Railway Company, so created by consolidation as aforesaid, there upon became successor to each and all of the said constituent companies, and thereby became vested with all the rights, titles, interests, properties and franchises of each and all of said constituent companies. That the said Union Pacific Railway Company has and maintains its general office and principal place of business in the City of Omaha, in the State and District of Nebraska. Your orators pray leave to refer to each and every act of Congress of the United States which are hereinbefore and hereinafter mentioned with the same force and effect as if said acts were herein set out at length.

That the said defendant The Union Pacific Railway Company owns a line of railway extending from Council Bluffs in the State of Iowa, westerly through the States of Nebraska and Wyoming into the Territory of Utah to a point about five miles west of Ogden, and a connection with the Central Pacific Railroad mentioned in said acts of Congress, a distance of about 1,042.93 miles; and also a line of railway extending from Kansas City in the State of Missouri, westerly through the State of Kansas and into the State of Colorado to Denver, a distance of about 639 miles; and also a line of railway extending from Denver in the State of Colorado in a northerly direction to Cheyenne in the State of Wyoming, a distance of about 106 miles, together with certain terminal extensions and spur tracks and branches used in connection therewith, making a total mileage of 1,829 miles or thereabouts owned by said Union Pacific Railway Company.

Second. That the Union Pacific Railroad Company (the mortgagor in the first mortgage of November 1st, 1865, of which your orators are successor trustees, which is hereinafter more fully referred to) was duly incorporated and organized under and by virtue of said acts of the Congress

of the United States of July 1st, 1862, and of July 2d, 1864, and the other acts of Congress of the United States amendatory thereof and supplemental thereto, which are hereinbefore referred to.

That in and by said act of Congress of July 1st, 1862, the said Union Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph with the appurtenances commencing at a point on the one-hundreth meridian of longtitude west of Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska, at a point to be fixed by the president of the United States after actual surveys; thence running westerly upon the most direct, central and practicable route through the territories of the United States to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

Section 14 of said act of July 1, 1862, authorized and required the said Union Pacific Railroad Company to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa to be fixed by the president of the United States upon the most direct and practicable route to be subject to his approval so as to form a connection with the lines of said company at some point on the one-hundredth meridian of longitude aforesaid from the point of commencement on the western boundary of the State of Iowa upon the same terms and conditions in all respects as were in said act contained for the construction of said railroad and telegraph line above mentioned.

That said act of July 1, 1862, granted the right-of-way through the public lands of said railroad company for the construction of said railroad and telegraph line, and the right, power and authority to said company to take from the public lands adjacent to the line of said road, earth, stone, timber and other materials for the construction thereof; said right-of-way so granted to said railroad company being to the extent of 200 feet in width on each side of its railroad where it should pass over the public lands, including all necessary grounds for stations, buildings, work

shops and depots, machine shops, switches, side tracks turn tables and water stations.

That Section 5 of said act provided that for the purposes therein mentioned the secretary of the treasury should, upon the certificate in writing of certain commissioners (the appointment and duties of whom were in said act provided) of the completion and equipment of forty consecutive miles of said railroad and telegraph in accordance with the provisions of said act, issue to said railroad company bonds of the United States of $1,000 each, payable in thirty years after date bearing six per centum per annum interest (said interest payable semi-annually) which interest might be paid in United States treasury notes or any other money or currency which the United States had or should declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States as in said act provided of the amount of said bonds so issued and delivered to said railroad company, together with all interest thereon which should have been paid by the United States.

Said act further provided that the issue of said bonds and the delivery to the said company should *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph property, together with the rolling stock fixtures and property of every kind and description, and in consideration of which said bonds might be issued.

Section 11 of said act of July 1, 1862, provided that for 300 miles of the road of the said Union Pacific Railroad Company most mountainous and difficult of construction to-wit, 150 miles westwardly from the eastern base of the Rocky Mountains and 150 miles eastwardly from the western base of the Sierra Nevada Mountains, said points to be fixed by the President of the United States, the bonds to be issued in aid of the construction of said road should be treble the number per mile in said act before provided (to-wit, $48,000 per mile instead of $16,000 per mile), and that the same should be issued on the certificate of said commissioners as in said act before provided, that twenty consecutive miles of the said road were completed; and that between the sections last named of 150 miles each the bonds to be issued to aid in the construction shoul

be double the number per mile first mentioned (to-wit, $32,000 instead of $16,000 per mile), and that the same should be issued upon the construction of every twenty miles thereof upon the certificate of the said commissioners as aforesaid that twenty consecutive miles of the same were completed; provided that no more than 50,000 of said bonds should be issued under said act to aid in constructing the main line of said railroad and telegraph.

Section 10 of said act of July 2, 1864 (amendatory of said act of July 1, 1862,) provided that said section 5 of said act of July 1, 1862, be so modified and amended that The Union Pacific Railroad Company might, on the completion of each section of its road as provided in said act of July 2, 1864, and in said act of July 1, 1862, issue its first mortgage bonds on its railroad and the telegraph line to an amount not exceeding the amount of the bonds of the United States and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said company; and that the lien of the United States bonds should be subordinate to that of the bonds of said railroad company in said act authorized to be issued on its road, property and equipments, except as to the provisions of the sixth section of the said act of July 2d, 1862, relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies and public stores for the government of the United States; and further provided that said section 5 of said act of July 1st, 1862, be further amended by striking out the word "forty" and inserting in lieu thereof the words "on each and every section of not less than twenty."

That in and by an act of Congress of the United States, approved March 3d, 1865, it was enacted that section 10 of said act of July 2d, 1864 (being the section of said last-mentioned act the provisions whereof are last hereinabove set forth,) be so modified and amended as to allow the said The Union Pacific Railroad Company, among other companies, to issue its six per centum thirty-year bonds, interest payable in lawful money of the United States, upon its separate road, and to issue its bonds to the extent of 100 miles in advance of a continuous completed line of construction.

That by an act of the Congress of the United States, approved July 3d, 1866, the said Union Pacific Railroad Company, with the consent and approval of the Secretary of the Interior, was authorized to locate, construct and continue their road from Omaha in Nebraska Territory westward, according to the best and most practicable route and without reference to the initial point on the one-hundredth meridian of west longitude, as then provided by law, in a continuous completed line until they should meet and connect with the Central Pacific Railroad Company of California, and the said Central Pacific Railroad Company of California, with like consent and approval, was authorized to locate, construct and continue its road eastward in a continuous completed line until they should meet and connect with the Union Pacific Railroad.

Third. That, pursuant to provisions of the congressional legislation hereinbefore recited, the President of the United States by executive orders, dated November 17th, 1863, and March 7th, 1864, duly fixed the eastern terminus of the Union Pacific Railroad on the Iowa bank of the Missouri River; and thereafter and prior to the date of the consolidation hereinafter mentioned the said Union Pacific Railroad Company constructed and completed its line of railroad and telegraph, with the appurtenances thereto belonging, from Council Bluffs in the State of Iowa, westerly through the States (then territories) of Nebraska, Colorado and Wyoming, and into the Territory of Utah to a connection with the railroad of the said Central Pacific Railroad Company at a point about five miles west of Ogden in said Territory of Utah, a distance of 1,042.93 miles, more or less, including a bridge over the Missouri River between said Council Bluffs in the State of Iowa and and Omaha in the State of Nebraska; all of which lines of railroad and telegraph and bridge, with the appurtenances thereof, were constructed as, in the manner, upon the conditions, within the time and upon the approvals and consents contemplated, defined and prescribed in said congressional legislation; and all of which said line of railroad, telegraph, bridge and appurtenances are as your orators are advised and aver embraced in and included in the first mortgage of the said Union Pacific Railroad Company of November 1st,

1865, of which your orators are successor trustees, as hereinafter stated.

Fourth. Your orators further aver that on or prior to the 1st day of November, 1865, the said The Union Pacific Railroad Company, being duly authorized by law, to-wit: by the acts of the Congress of the United States hereinbefore referred to, borrow money and issue its bonds for the objects and purposes in said acts mentioned and to execute a mortgage to secure the payment thereof, which said bonds and mortgage by said acts of Congress were made the first lien unto which the lien of the bonds issued by the government in aid of the construction of said railroad were by said acts made subordinate; and being desirous of borrowing a sum of money which should be equal to the amount per mile of United States bonds provided by said acts to be issued to said company for each and every mile of its said railroad then completed and to be thereafter completed, and of securing by mortgage the payment of its corporate bonds to be issued and negotiated therefor, did, under, and pursuant to such lawful authority conferred by said acts of Congress, duly determine and resolve to make, execute, issue, negotiate and deliver, under its corporate seal, its corporate bonds, from time to time, and severally payable to bearer, for the sum of $1,000 each, thirty years after the date thereof, with semi-annual interest at the rate of six per centum per annum from the date thereof, to an amount equal and not exceeding per mile the amount provided to be issued by the government of the United States to aid in the construction of said railroad; each of said bonds so to be issued to bear date of the time of its issue and to be in form and be certified and have coupons annexed as set forth and shown in the first mortgage hereinafter mentioned, copy whereof is attached hereto as part of this bill of complaint and marked Exhibit "A."

And in pursuance of the determination and resolution aforesaid, and of due corporate action, and as thereunto duly authorized by law, the said Union Pacific Railroad Company did thereafter duly make, execute and issue under its corporate seal, and did deliver to various persons, firms and corporations, for value and for the considerations and purposes and in the manner provided in said first mortgage, its bonds to the number of 27,229, in the aggre-

gate amount of $27,229,000, which said bonds bore dat
and by their terms matured as hereinafter set forth, an
in each of which the said Union Pacific Railroad Compan
promised to pay the sum of $1,000 to the holder thereo
at its office in the City of New York thirty years after th
date thereof, and also interest thereon at the rate of si
per centum per annum, payable semi-annually from th
date thereof, in lawful money of the United States, unti
the principal sum be paid, on presentation of the interes
coupons annexed thereto at the office of the said compan
in the City of New York. A copy of each of said bond
(except as to the serial number, date and the signature
of the officers of the said railroad company) is set fort
and included in the said first mortgage, copy whereof is
as aforesaid, attached hereto as part hereof.

Fifth. Your orators further state that, pursuant t
the said determination and resolution of the said Unio
Pacific Railroad Company and to due corporate action o
said company and as thereunto authorized by law, an
pursuant to authority so conferred by acts of congress, a
aforesaid, and for the purposes in said resolution and deter
mination specified, and to secure the payment of the sai
bonds so to be issued by said railroad company and of th
interest to grow due thereon, the said Union Pacific Rail
road Company did, on or about the 1st day of November
1865, duly make and execute under its corporate seal, an
did deliver to Edwin D. Morgan, of the City of New York
and Oakes Ames, of Easton, in the State of Massachusetts
as trustees, a mortgage or deed of trust, dated on said 1s
day of November, 1865, wherein and whereby the sai
Union Pacific Railroad Company did bargain, sell, assign
transfer and set over, enfeoff, convey and confirm unto th
said Edwin D. Morgan and Oakes Ames, as trustees, an
in trust for the purposes aforesaid, and to the survivor o
them and to their successor or successors, all and singula
the railroad, telegraph, property and franchises in sai
mortgage described as follows:

"All and singular the railroad and telegraph of th
said party of the first part [the said Union Pacific Railroa
Company], heretofore constructed, or hereafter to be con
structed, from a point on the western boundary of th
State of Iowa, heretofore fixed by the President of th

United States, pursuant to the terms and provisions of said acts of congress, to-wit, at the City of Omaha, in the Territory of Nebraska; thence, as provided in said acts of congress, through the territories of the United States to the western boundary of the late Territory of Nevada, together with all its lands, tenements, hereditaments, rights of way and easements, acquired or appropriated, or which shall be hereafter acquired or appropriated, for the purpose of a right of way for a single, double or other track, railroad and telegraph line, and for depots, engine houses, car houses, station houses, warehouses, machine shops, superstructures, erections and fixtures, being necessary for the use of said railroad or telegraph; and also all and singular the franchises now owned, possessed or acquired, or which shall be hereafter owned, possessed or acquired, by the said party of the first part, for the purpose of building and operating said railroad and telegraph above specified and described; and also all the rails, depots, yards, engine houses, car houses, station houses, warehouses, machine shops, workshops and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired, by said party of the first part, necessary to said railroad or telegraph line, or the running and operating the same."

A copy of said mortgage is attached hereto as part hereof marked Exhibit "A."

Sixth. That subsequently and on or about the 12th day of March, 1868, the said Union Pacific Railroad Company made and entered into an agreement or indenture supplemental to said first mortgage of November 1st, 1865, with said Edwin D. Morgan and Oakes Ames, trustees, dated on said March 12th, 1868, wherein and whereby the said Union Pacific Railroad Company, for good and valuable consideration therein expressed, agreed with the said Edwin D. Morgan and Oakes Ames, trustees, for the benefit of all who then were or should thereafter be holders of said first mortgage bonds, and to and with the successors of said trustees in the trust created by said indenture of mortgage of November 1st, 1865, that the principal of all said first mortgage bonds, being $1,000 each, as well such as had then been issued as such as should thereafter be issued, should and would be paid by the said railroad com-

pany whensoever they should respectively become payable, according to the tenor thereof, in the gold coin of the United States at par, that is to say, $1,000 of such coin for each of said bonds. That thereafter the said Union Pacific Railroad Company, or said successor company, The Union Pacific Railway Company, did, as your orators are informed and believe, stamp or cause to be stamped upon all or substantially all of the said bonds issued under and secured by said first mortgage of November 1st, 1865, a provision to the effect that the same should be payable in United States gold coin. That a copy of said agreement or supplemental indenture of March 12th, 1868, is attached hereto and made part hereof, marked Exhibit "B."

Seventh. Your orators further show that the said Edwin D. Morgan and Oakes Ames, trustees as aforesaid under said first mortgage of November 1st, 1865, duly accepted said mortgage and the trusts thereunder, and continued to be and act as the trustees thereof until their deaths, respectively. That on the 8th day of May, 1873, the said Oakes Ames died, and on December 3d, 1873, Oliver Ames was duly appointed trustee in the place and stead of said Oakes Ames: and the said Oliver Ames afterwards, to-wit, on the 9th day of March, 1877, died; and on June 1st, 1881, Frederick L. Ames was duly appointed trustee in the place and stead of said Oliver Ames. That on the 14th day of February, 1883, Edwin D. Morgan died; and on March 6th, 1883, F. Gordon Dexter was duly appointed successor trustee in the place and stead of said Edwin D. Morgan. That on the 13th day of September, 1893, Frederick L. Ames died, and on October 12th, 1893, Oliver Ames, Second, was duly appointed trustee under said mortgage in the place and stead of said Frederick L. Ames. Each of the said trustees, original and successor, duly accepted said mortgage and the trusts thereunder, and said F. Gordon Dexter and Oliver Ames, Second, your orators herein, now are the trustees under said mortgage.

Eighth. Your orators further aver that said $27,229,000 of first mortgage bonds issued by the said Union Pacific Railroad Company and secured by said mortgage of November 1st, 1865, of which your orators are successor trustees as aforesaid, were, as your orators are informed and believe, duly certified by the original

trustees under said mortgage and were, prior to any succession in said trusteeship, duly issued, negotiated and delivered as, in the manner and for the considerations and purposes, and upon the conditions provided and defined in and by the provisions of said first mortgage; and that all of said bonds are and were, prior to the defaults hereinafter recited, outstanding in the hands of the persons to whom the same were issued, or their successors in interest.

That the bonds so issued and outstanding bear date and mature respectively as follows:

Said bonds to the amount of six million four hundred and seventy-five thousand dollars are dated on the first day of January, 1866, and the principal thereof will mature on the first day of January, 1896.

Said bonds to the amount of one million five hundred and ninety-eight thousand dollars are dated on the first day of January, 1867, and the principal thereof will mature on the first day of January, 1897.

Said bonds to the amount of one million nine hundred and twenty thousand dollars are dated on the first day of July, 1867, and the principal thereof will mature on the first day of July, 1897.

Said bonds to the amount of five million nine hundred and ninety-nine thousand dollars are dated on the first day of January, 1868, and the principal thereof will mature on the first day of January, 1898.

Said bonds to the amount of eight million eight hundred and thirty-seven thousand dollars are dated on the first day of July, 1868, and the principal thereof will mature on the first day of July, 1898.

Said bonds to the amount of two million four hundred thousand dollars are dated on the first day of January, 1869, and the principal thereof will mature on the first day of January, 1899.

Ninth. Your orators aver that the said defendant, The Union Pacific Railway Company, made default in the payment of all of the interest and of the coupons representing such interest which became due on said first mortgage

bonds on the first day of July, 1894, although, as your orators are informed and believe, payment of said interest and coupons, or of some, or some portion thereof, was duly demanded by holders of said bonds, and that said default continued in whole until on or about the 27th day of November, 1894, when the Receivers hereinafter mentioned offered to pay said defaulted interest at the face of the coupons representing the same, but not including interest accrued upon said coupons; and that a portion of such defaulted interest and of said coupons, the amount whereof your orators cannot accurately state, has been paid by said Receivers at the face of said coupons, but that no part of the interest accrued upon said defaulted coupons has been paid or tendered by the said Receivers or by The Union Pacific Railway Company or by any person on behalf of either, or otherwise, but all of the interest upon said defaulted coupons remains due and unpaid.

Your orators further aver that no part of the interest and of the coupons representing the interest which became due on each and all of said outstanding first mortgage bonds, on the first day of January, 1895, was paid by the defendant, The Union Pacific Railway Company, or by said Receivers, or by any one in their behalf or in behalf of either of them, or otherwise; but that said defendant railway company wholly made default in the payment of said interest and coupons which fell due on said bonds on the first day of January, 1895, and the same and every part thereof has ever since remained unpaid and in default, although payment of said interest and coupons, or of some part or some thereof, has, as your orators are informed and believe, been duly demanded.

Tenth. Your orators further show that on the 9th day of October, 1893, Oliver Ames, Second (one of your orators herein), and Samuel Carr, citizens and residents of the State of Massachusetts, as executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff, a citizen and resident of the State of New York, and Edwin F. Atkins, a citizen and resident of the State of Massachusetts, filed in this Court a bill of complaint against The Union Pacific Railway Company and others in a certain cause entitled as follows:

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that this volume, paged from 1 to 536, inclusive, comprises a part of and is embraced within the certificate to the transcript of record in the case of Union Pacific Railroad Company, appellant, *vs.* Mason City and Fort Dodge Railroad Company, No. 1975.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at office in the city of St. Louis, Missouri, in the eighth circuit, this twenty-third day of April, A. D. 1904.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,

*Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.*

IRCUIT COURT OF THE UNITED STATES FOR THE EIGHTH JUDICIAL CIRCUIT, DISTRICT OF NEBRASKA.

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LIVER AMES, Second, and SAMUEL CARR, Executors of the Last Will and Testament of Frederick L. Ames, deceased, and PETER B. WYCKOFF and EDWIN F. ATKINS,
Complainants,

vs.

HE UNION PACIFIC RAILWAY COMPANY; THE ATCHISON, COLORADO AND PACIFIC RAILWAY COMPANY; THE ATCHISON, JEWELL COUNTY AND WESTERN RAILROAD COMPANY; THE BOULDER VALLEY AND CENTRAL CITY WAGON ROAD COMPANY; THE BOZEMAN COAL COMPANY; THE CALLAWAY IMPROVEMENT COMPANY; THE CARBON CUT-OFF RAILWAY COMPANY; THE CENTRAL BRANCH UNION PACIFIC RAILROAD COMPANY; THE DENVER, LEADVILLE AND GUNNISON RAILWAY COMPANY; THE GREEN RIVER WATER WORKS COMPANY; THE JUNCTION CITY AND FORT KEARNEY RAILWAY COMPANY; THE KANSAS CENTRAL RAILROAD COMPANY; THE KANSAS CITY AND OMAHA RAILROAD COMPANY; THE KEARNEY AND BLACK HILLS RAILWAY COMPANY; THE LARAMIE, NORTH PARK AND PACIFIC RAILROAD AND TELEGRAPH COMPANY; THE LAWRENCE AND EMPORIA RAILWAY COMPANY; THE LOVELAND PASS MINING AND RAILROAD TUNNEL COMPANY; THE MONTANA RAILWAY COMPANY; THE MORRISON STONE, LIME AND TOWN COMPANY; THE OMAHA AND REPUBLICAN VALLEY RAILWAY COMPANY; THE OREGON RAILWAY AND NAVIGATION COMPANY; THE OREGON SHORT LINE AND UTAH NORTHERN RAILWAY COMPANY; THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY; THE SALINA AND SOUTHWESTERN RAILWAY COMPANY; THE SOLOMON RAILROAD COMPANY;

THE UNION LAND COMPANY; THE UNION PACIFIC, DENVER AND GULF RAILWAY COMPANY: THE UNION PACIFIC, LINCOLN AND COLORADO RAILWAY COMPANY, and THE UNION PACIFIC COAL COMPANY,
Defendants.

That the title of said bill was subsequently amended by orders of Court by the interlineation of the names of the following additional defendants:

The Cascade Railroad Company, the Columbia & Palouse Railroad Company, the Mill Creek Flume and Manufacturing Company, the Oregon Railway Extensions Company, the Walla Walla & Columbia River Railroad Company, the Washington & Idaho Railroad Company, the Wood River Improvement Company, the Echo & Park City Railway Company, the Rattlesnake Creek Water Company, and the Boise City Railway and Terminal Company.

That in and by said last-mentioned bill of complaint (hereinafter, for convenience, called the "Ames bill"), the complainants in said cause, the title whereof is last-above recited (which said cause is hereinafter, for convenience, styled the 'Ames cause") represented and showed to this Court that The Union Pacific Railway Company (being the same company as The Union Pacific Railway Company, one of the defendants herein) was created by and existed under certain laws of the United States, to-wit, the acts of congress hereinbefore in that behalf referred to, and that the remaining defendants in said bill were incorporations organized and existing respectively under the laws of several states, namely, Kansas, Colorado, Montana, Nebraska, Wyoming, Oregon, the Territory of Utah and the Territory of New Mexico; and that the defendant, The Union Pacific Railway Company, was owner of large amounts in value of the shares of stock and bonds of said several other defendant corporations, and operated the railroads, telegraphs and properties thereof through and by virtue of such ownership of securities and by contracts and arrangements, the particulars whereof are fully set forth in said Ames bill. Said bill further represented and showed that the complainants therein were respectively the holders in various amounts of the stock, bonds and

obligations of the said Union Pacific Railway Company and of many of the said other corporations defendants in said bill. Said bill further alleged in detail the stock capitalization, bonded and mortgage indebtedness, guarantees and floating obligations and liabilities of the defendants therein, and particularly alleged the several mortgages of The Union Pacific Railway Company covering, embracing or effecting the railroads and properties embraced in said first mortgage of The Union Pacific Railroad Company of November 1, 1865, of which your orators are trustees. Said bill further alleged the current and then presently accruing obligations of the said defendant Union Pacific Railway Company, the resources, earnings and financial condition of said company, and that by reason of a prevailing depression in business and extraordinary stringency of money markets, and by reason of other causes in said bill set forth, the earnings of said company had been seriously depleted, and it was charged in said bill that for the year 1893 the business of said company would fail to meet its expenses and charges by the sum of at least three million dollars; and that the said railway company was not then able, and would not thereafter during the year 1893, be able to earn, either upon its own lines of railway or upon its said system, or either or both of them, its operating expenses and fixed charges, and that the said defendant, The Union Pacific Railway Company, was insolvent and could not meet or pay its indebtedness or liabilities as they fell due or accrued in the usual and ordinary course of business.

Said Ames bill prayed for the appointment by this Court of Receivers of all of the railroad and property of The Union Pacific Railway Company, and each of the other defendants therein, and the prayer of the said Ames bill (omitting that portion thereof praying for writ of subpœna) was as follows:

"2. That the Court will fully administer the trust fund in which your orators are interested, constituting the entire railroad system, lands and assets of the said defendant corporation, The Union Pacific Railway Company, and will for such purpose marshal all its assets and ascertain the several respective liens and priorities existing upon each and every part of all the said system of railway and property, and the amount due upon each and

every part of such mortgages or other liens, and enforce and decree the rights, liens and equities of each and all of the stockholders and bondholders and creditors of the said defendants, and of each of them, as the same may be finally ascertained and decreed by the Court upon the respective interventions or applications of each and every of such stockholder, creditor or lienor, in and to not only said lines of railroad, appurtenances, equipments, lands and property, but also to and upon each and every portion of the assets and property of each of the said corporations.

"3. That, for the purpose of enforcing the liens and equities of the holders of the loans and of the floating debt of the said defendant The Union Pacific Railway Company, and of the respective stockholders, bondholders, lien holders and general creditors of each of the said defendants, and of each of the companies embraced in or operated as a part of the said system, as well as to preserve the unity of said system as it has been for years maintained and operated, and preventing the disruption thereof by separate executions, attachments and sequestrations, the occurrence of which will be unavoidable in view of the inevitable defaults in interest and other payments which will soon occur, your orators pray that this Court will forthwith appoint one or more Receivers of the entire system of railroads held, controlled, leased or operated by, or in the interest, or for the benefit of the said defendant, The Union Pacific Railway Company, and of all the equipments, material, machinery, supplies, moneys, accounts, choses in action, shares of stock, bonds, property and assets of every description, and wheresoever situated, and of all said lands and land grants, leasehold, contractual rights and property belonging to the said defendant, The Union Pacific Railway Company, as well also as all those belonging to each of the defendants herein, and those of each the said several companies controlled, leased or operated by, for or in the interest of said Union Pacific Railway Company, as a part of, or in connection with, said system, with authority to manage and operate the same; and that each of the defendants, and the officers, managers, superintendents, agents and employees of each of the defendants, be required forthwith to deliver up the possession of all and singular each and every part of the said property

over which the Receivers shall be appointed, wherever situate; also all books of accounts, office vouchers and papers in any way relating to the business or operation of said system of railways, and for an injunction restraining perpetually and during the pendency of this suit each of the defendants and every of the officers, directors, managers, superintendents, agents and employees of each of the defendants, and all persons whomsoever, from interfering in any way whatever with the possession and control of the Receivers over any part of said property.

"4. And that your orators may have such other and further relief as to the Court may seem proper, and as may be necessary to fully enforce the rights and equities of your orators, and of all other creditors and stockholders of the defendant corporations."

Your orators pray leave to refer to said Ames' bill or to a duly authenticated copy thereof, when the same shall be produced upon the final hearing or upon any hearing herein, with the same force and effect as if said bill were herein set out at length.

Your orators further show that upon the filing of said Ames' bill The Union Pacific Railway Company, one of the defendants herein filed its answer thereto and each and every other defendant company in said bill named filed its entry of appearance in said Ames' cause; the said Union Pacific Railway Company by its said answer admitting the allegations of said bill and consenting to the appointment of Receivers as therein prayed and said other corporations defendants in said bill, each in and by its entry of appearance, likewise consenting to such appointment of Receivers.

That thereafter and upon the 13th day of October, 1893, Hon. Elmer S. Dundy, one of the Judges of this Court, made an order appointing Receivers as in said bill prayed, which said order was filed in said cause on said 13th day of October, 1893. A copy of said order appointing Receivers is attached hereto as part thereof and marked Exhibit "C."

That in and by said order of October 13th, 1893, S. H. H. Clark, of St. Louis, Missouri; Oliver W. Mink, of Boston, Massachusetts, and E. Ellery Anderson, of New York (all of whom are made defendants herein), were ap-

pointed Receivers of the defendant The Union Pacific Railway Company, and of all the railroads and assets described in said Ames' bill, being the system of railroads owned, possessed, held and controlled, leased or operated by, for or in the interest of the said Union Pacific Railway Company, and all of the property of said Union Pacific Railway Company, and of each of said other companies, defendants in said Ames' bill, real, personal and mixed, of whatever kind and description and wherever situated, whether described in said Ames' bill or not, including all equipments, locomotives, cars and other rolling stock, boats, steamships, docks, piers, floats, machinery, tools, material, shops, coal yards and fixtures, coal on hand and supplies then owned, held or in possession of any of said defendants in said Ames' bill, and including all track, terminal facilities, real estate, warehouses, offices, stations and other buildings of every kind owned, held or possessed by said companies, together with all telegraph lines and the appurtenances thereto, and also all the moneys, books of account, contracts of every kind, debts, things in action, bonds, stocks, securities, deeds, leases, leasehold interests, beneficial muniments of title, bills receivable, rents, profits and income of the premises accruing and to accrue, as well as all franchises, rights, easements and privileges of each of said companies defendant in said Ames' bill.

That said Receivers so appointed by this Court qualified as such and thereupon took possession of all the lines of railroad, lands and properties of every description embraced in and covered by said order, and have since (together with the additional Receivers hereinafter mentioned, from the date of their appointment) continuously held and now hold (with said additional Receivers) possession thereof, controlling, using, operating and managing the same as in said order directed and prescribed. That on the 13th day of November, 1893, an order was made in said Ames' cause in this Court appointing John W. Doane, of Illinois, and Frederic R. Coudert, of New York City, additional Receivers of this Court, of all and singular the Union Pacific Railway and of all the railroad, property and assets described in the Ames' bill of complaint, and more particularly described in the order of this Court theretofore entered in said Ames' cause, appointing S. H.

H. Clark, Oliver W. Mink and E. Ellery Anderson Receivers. That it was in said order appointing such additional Receivers provided that John W. Doane and Frederic R. Coudert, acting and co-operating with the said Receivers, Clark, Mink and Anderson, should have all the powers granted to, and perform all the duties imposed upon, the said Receivers, Clark, Mink and Anderson, by the former orders of this Court, as fully and to the same effect as if the original order of this Court, appointing the the said Clark, Mink and Anderson as such Receivers, had embraced the names of five receivers instead of three, namely, of the said Doane and Coudert in addition to the said Clark, Mink and Anderson. A copy of the order appointing such additional Receivers is attached hereto as part hereof, and marked Exhibit "D." That said additional Receivers thereupon qualified as such, and have been and now are acting and in possession as such with said Receivers originally appointed as aforesaid.

Like bills were filed by the complainants in said Ames' cause in the Circuit Courts of the United States for the other several districts in which property of said defendants was located, and among other Courts, in the United States Circuit Courts for the Southern District of Iowa, for the District of Colorado, and for the District of Wyoming, and in the District Court for the Third Judicial District of the Territory of Utah; and in each and all of said jurisdictions like proceedings were thereupon had and like orders entered appointing the same persons ancillary Receivers of all the property of said defendants, in said Ames' bill, situated in said several jurisdictions, respectively. Said Receivers so appointed duly qualified as such and have been and now are in possession, as such Receivers, of all the property of said defendants situated within the territorial jurisdiction of said Courts, respectively. To each and all of said bills, proceedings and orders, and especially to the bills, proceedings and orders filed and made in the Circuit Courts of the United States for the Southern District of Iowa, for the District of Colorado, and for the District of Wyoming, and in the District Court for the Third Judicial District of the Territory of Utah, your orators pray leave to refer with the same force as if the same were here set out at length.

Eleventh. Your orators further show that all the lines of railroad and telegraph, lands, and all property of every description embraced in said first mortgage of The Union Pacific Railroad Company, of November 1st, 1865, are, by virtue of said order appointing Receivers in said Ames cause (which cause is still pending and undetermined in this Court), in the possession, custody and control of this Court, and that all of said property so embraced in said mortgage is in process of administration by this Court, by reason whereof your orators are and will be unable, save as herein sought, to take possession of the same, and through possession thereof to administer their trust as in said mortgage it was provided they should do in the event of default in the payment of interest as therein specified, and to have the mortgaged premises sold and duly administered and their said security enforced as in said mortgage contemplated and provided.

Your orators further show that said Union Pacific Railway Company is insolvent and unable to meet its operating expenses and accrued obligations, and it is in default in the payment of interest heretofore matured on its bonded debt and guaranties in an amount aggregating several millions of dollars.

Your orators further show that said Union Pacific System comprises many roads operated as part of said system by virtue of ownership of stock by the said Union Pacific Railway Company, or of leases or of other arrangements, which are unproductive, the earnings whereof have in past years been insufficient, and continue to be insufficient, to meet the expenses of operating the same; and upon information and belief your orators aver and charge that the revenues derived from other parts of the said Union Pacific System, and particularly revenues derived from the railroad known as the Union Division, and embraced in the said first mortgage to your orators as trustees, and which revenues are an essential element of said mortgage security, have been, and continue to be, by said Receivers diverted and used for the purpose of meeting the said deficit in the earnings of said unproductive roads and parts of the system.

Your orators further show that said first mortgage specifically pledges to your orators, as trustees thereof,

and for the security of holders of bonds issued thereunder, all of the franchises of the said mortgagor described in said mortgage, including, as your orators are advised and aver, the franchises to levy, charge, collect and receive charges, tolls, income and revenues upon and from and for the use and from the operation of the railroad, telegragh and property embraced in said mortgage, and including the franchise to maintain and operate said railway; and said mortgage further provides that, in the event of default, as in said mortgage specified, in the payment of interest on said bonds, and upon the request of holders of bonds as therein provided, it shall be the duty of said trustees forthwith enter into and take possession of all and singular the said mortgaged property, rights and franchises, and use, operate and manage the same for the benefit of the holders of all said bonds.

Your orators further show that by reason of the insolvency of the defendant The Union Pacific Railway Company, the mortgagor (as successor to said Union Pacific Railroad Company as aforesaid), and by reason of the diversion, by the said Receivers in the Ames cause, of the revenues of the estate mortgaged to your orators as aforesaid, and by reason of the fact that said revenues form, as your orators charge and aver, an essential element of the security of your orators and of the holders of said bonds secured by said mortgage, your orators are entitled to have the said revenues forthwith immediately and continuously appropriated to the payment of the interest upon the said bonds secured by said mortgage.

Your orators further state that, as they are informed and believe, the said mortgaged premises, under the conditions aforesaid, and as the same are now situated and circumstanced, are insufficient and inadequate security for the payment of the outstanding bonds secured by said first mortgage of The Union Pacific Railroad Company of November 1st, 1865, of which your orators are successor trustees.

Your orators further show that, by reasn of the premises, your orators, as such trustees, are entitled to have their trust with respect to said mortgaged estate duly administered and executed, and to have said mortgaged premises sold; and, to the end that they may have a decree

enforcing their security, together with proper intermediate relief, they bring this their bill of complaint.

Twelfth. That the United States of America has or claims to have a lien upon the railroad and property, or some part of the railroad and property, embraced in the said first mortgage of which your orators are trustees, arising out of and created by the acts of congress of the United States hereinbefore referred to, which, among other things, provide a lien to secure the bonds of the United States, issued in aid of the construction of said railroad, or of parts thereof; or, said United States of America otherwise has or claims to have some interest in or lien upon said railroad and property.

That the defendant The Union Trust Company of New York is a corporation organized under the laws of the State of New York, and is a citizen and resident of said State of New York; the said last-named company has or claims to have some lien upon or interest in the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain mortgage made by the said Union Pacific Railroad Company to the said Union Trust Company of New York as trustee, dated on the 18th day of December, 1873, and know as the "Sinking Fund Indenture" of the said Union Pacific Railroad Company; or, said Union Trust Company otherwise has or claims to have some lien upon or interest in said railroad and property, or upon or in a part thereof.

That the defendant J. Pierpont Morgan is a citizen and resident of the State of New York, and the defendant Edwin F. Atkins is a citizen and resident of the State of Massachusetts, and said defendants Atkins and Morgan have or claim to have some lien upon or interest in or upon some part of the proprety described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain mortgage or deed of trust made by the said Union Pacific Railroad Company to John Edgar Thomson of Philadelphia (since deceased), and to said J. Pierpont Morgan and Elisha Atkins, dated on the 1st day of April, 1871, and known as the "Omaha Bridge Mortgage," and arising out of an agreement between The Union Pacific Railroad Company and said Thomson, Morgan and

Atkins, dated on the 27th day of September, 1871, and know as the "Supplemental Omaha Bridge Mortgage;" or said Morgan and Atkins otherwise have or claim to have some lien upon or interest in or upon some part of said property.

That the defendant The Central Trust Company of New York is a corporation organized and existing under the laws of the State of New York, and is a citizen and resident of the said State of New York; that said last named defendant has or claims some lien upon or interest in a part of the property conveyed by said first mortgage of which your orators are trustees, arising out of a certain mortgage made by the defendant The Union Pacific Railway Company to the said Central Trust Company of New York, as trustee, dated on the 1st day of October, 1885, and known as the "Omaha Bridge Renewal Mortgage;" or said Central Trust Company otherwise has or claims to have some lien upon or interest in a part of the said property.

That the defendant The Central Pacific Railroad Company is a corporation organized and existing under the laws of the State of California, and is a citizen and resident of said State of California; that said defendant has or claims to have some lien upon or right of interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement or lease, dated June 13, 1875, made, as your orators are informed and believe, between the said Central Pacific Railroad Company and the said Union Pacific Railroad Company, and arising out of a further agreement dated on the 10th day of February, 1888, and made by and between the said Union Pacific Railway Company and the said Central Pacific Railroad Company; or, the said Central Pacific Railroad Company otherwise has or claims to have some such lien, right or interest.

That the defendant the Southern Pacific Company is a corporation organized and existing under the laws of the State of Kentucky, and is a citizen and resident of said State of Kentucky; that said last named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property,

described in and conveyed by said first mortgage, of which your orators are trustees, arising out of some contract, lease or other agreement heretofore made between said Central Pacific Railroad Company and said Southern Pacific Company, of the date and terms of which your orators are not advised, or said Southern Pacific Company otherwise has or claims to have some such lien, right or interest.

That the defendant the St. Joseph & Grand Island Railroad Company is a corporation organized and existing under the laws of the State of Kansas, and is a citizen and resident of said State of Kansas; that said St. Joseph & Grand Island Railroad Company has or claims to have some lien upon, or right, or interest in or upon the property, or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of two certain agreements, one which was dated on the 1st day of July, 1885, and made and entered into between the said St. Joseph & Grand Island Railroad Company and the defendant The Union Pacific Railway Company, and the other of which was dated on the 1st day of January, 1887, and made and entered into between the Kansas City & Omaha Railroad Company, the said St. Joseph & Grand Island Railroad Company, and the said Union Pacific Railway Company; or said defendant the St. Joseph & Grand Island Railroad Company otherwise has or claims to have some lien upon or right, or interest in the said property, or some part thereof.

That the defendant The Kansas City & Omaha Railroad Company is a corporation organized and existing under the laws of the State of Nebraska, and is a citizen and resident of said State of Nebraska. That said last named defendant has, or claims to have, some lien upon, or right, or interest in or upon the property, or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of said agreement dated January 1st, 1887, between the said Kansas City & Omaha Railroad Company, the St. Joseph & Grand Island Railroad Company, and the Union Pacific Railway Company; or the said defendant the Kansas City & Omaha otherwise has or claims to have some such lien, right or interest.

That the defendant the Oregon Railway & Navign-

tion Company is a corporation organized and existing under the laws of the State of Oregon and is a citizen and resident of said State of Oregon. That said last named defendant has or claims to have some lien upon or right or interest in the property, or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of two certain agreements made and entered into between the said Oregon Railway & Navigation Company, the Oregon Short Line & Utah Northern Railway Company and The Union Pacific Railway Company, dated respectively on the 1st day of January, 1887, and the 7th day of November, 1887; or said Oregon Railway & Navigation Company otherwise has or claims to have some such lien, right or interest.

That the defendant the Oregon Short Line & Utah Northern Railway Company is a consolidated corporation organized and existing under the laws of the States of Wyoming, Idaho, Oregon and Montana, and of the Territory of Utah, and is a citizen and resident of each of said last mentioned states and of said territory; that said last named defendant has or claims to have some lien upon or right or interest in the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement between the said Oregon Short Line & Utah Northern Railway Company and the said Union Pacific Railway Company, dated on the 6th day of December, 1889; or said Oregon Short Line & Utah Northern Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant the Union Pacific, Lincoln & Colorado Railway Company is a consolidated corporation organized and existing under the laws of the State of Kansas, and is a citizen and resident of said State of Kansas; that said last mentioned defendant has or claims to have, some lien upon or right or interest in the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement between the said Union Pacific, Lincoln & Colorado Railway Company and the said Union Pacific Railway Company, dated on the 1st day of August, 1888; or said Union Pacific, Lincoln & Colorado Railway

Company otherwise claims to have some such lien, right or interest.

That the defendant The Chicago & Northwestern Railway Company is a corporation organized and existing under the laws of the State of Wisconsin, and is a citizen and resident of said State of Wisconsin; that said last named defendant has or claims to have some lien upon or right or interest in the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement between the said Chicago & Northwestern Railway Company and The Union Pacific Railway Company, dated on October 18th, 1889; or said Chicago & Northwestern Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant the Omaha & Republican Valley Railway Company is a corporation organized and existing under the laws of the State of Nebraska, and is a citizen and resident of said State of Nebraska; that said last named defendant has or claims to have some lien upon or right or interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of three certain agreements, the first of which was dated on the 18th day of October, 1889, and made and entered into between the said Omaha & Republican Valley Railway Company and the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and to which The Union Pacific Railway Company assented and became a party by agreement of the same date; the second of which was dated on the 14th day of March, 1890, and was made and entered into between the said Omaha & Republican Valley Railway Company, the Kearney & Black Hills Railway and the Union Pacific Railway Company, and the third of which was dated on the 1st day of May, 1890, and was made and entered into by and between the said Union Pacific Railway Company, the said Omaha & Republican Valley Railway Company, the Salina & Southwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Kansas & Nebraska Railway Company; or said defendant, The Omaha & Republican Valley Railway Company, otherwise has or claims to have some such lien, right or interest.

That the defendant the Chicago, St. Paul, Minneapolis & Omaha Railway Company is a corporation organized and existing under the laws of the State of Wisconsin, and is a citizen and resident of said State of Wisconsin. That said last named defendant has or claims to have some lien or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said agreement dated October 18, 1889, and made and entered into by and between the Omaha & Republican Valley Railway Company, the said Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Union Pacific Railway Company; or said Chicago, St. Paul, Minneapolis & Omaha Railway Company otherwise has or claims to have some such lien, right or interest.

The Kearney & Black Hills Railway Company is a corporation organized and existing under the laws of the State of Nebraska, and is a citizen and resident of said State of Nebraska; and said last named defendant has or claims to have some lien upon, or right or interest in or upon, the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said agreement and dated on the 14th day of March, 1890, and made and entered into by and between the said Omaha & Republican Valley Railway Company, the said Kearney & Black Hills Railway Company, and the said Union Pacific Railway Company; or said Kearney & Black Hills Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendants Frank H. Peavy, E. C. Michener and Charles T. Peavy, co-partners under the firm and style of F. H. Peavy & Company, are citizens and residents of the State of Minnesota, and each of them is a citizen and resident of said last named state. That said last named defendants have or claim to have some lien upon or right or interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 15th day of March, 1890, made and entered into by and between the said Union Pacific Railway Company, the said Frank H. Peavy, E. C. Mich-

ener and Charles T. Peavy, co-partners under the firm name and style of F. H. Peavy & Company; or the said Frank H. Peavy, E. C. Michener and Charles T. Peavy, co-partners as aforesaid, otherwise have or claim to have some such lien, right or interest.

That the defendant The Union Pacific, Denver & Gulf Railway Company is a consolidated corporation organized and existing under the laws of the States of Colorado and Wyoming, and is a citizen and resident of each of said last mentioned states. That said last named defendant has or claims to have some lien upon or right or interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 1st day of April, 1890, made and entered into by and between the said Union Pacific, Denver & Gulf Railway Company and the said Union Pacific Railway Company; or said defendant The Union Pacific, Denver & Gulf Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant the Chicago, Milwaukee & St. Paul Railway Company is a corporation organized and existing under the laws of the State of Wisconsin, and is a citizen and resident of said State of Wisconsin. That said last named defendant has or claims to have some lien upon or right or interest in the property, or some part of the property, described in or conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 30th day of April, 1890, and made and entered into by and between the said Union Pacific Railway Company and the said Chicago, Milwaukee & St. Paul Railway Company; or the said Chicago, Milwaukee & St. Paul Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant the Salina & Southwestern Railway Company is a corporation organized and existing under the laws of the State of Kansas, and is a citizen and resident of said State of Kansas. That the said last named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of a

certain agreement dated on the 1st day of May, 1890, and made and entered into by and between The Union Pacific Railway Company, the said Omaha & Republican Valley Railway Company, the said Salina & Southwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Kansas & Nebraska Railway Company; or said the Salina & Southwestern Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant the Chicago, Rock Island & Pacific Railway Company is a corporation organized and existing under the laws of the State of Illinois and Iowa, and is a citizen and resident of said last mentioned states. That said last named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said last mentioned agreement of May 1st, 1890, to which the said Chicago, Rock Island & Pacific Railway Company was a party as aforesaid; or said defendant the Chicago, Rock Island & Pacific Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant the Chicago, Kansas & Nebraska Railway Company is a corporation organized and existing under the laws of the States of Kansas and Colorado, and is a citizen and resident of each of said last mentioned states. That said last named defendant has or claims some lien upon or right of interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said last mentioned agreement of May 1st, 1890, to which said the Chicago, Kansas & Nebraska Railway Company was a party as aforesaid; or said defendant the Chicago, Kansas & Nebraska Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant the Missouri Pacific Railway Company is a corporation organized and existing under the laws of the State of Missouri, and is a citizen and resident of said State of Missouri. That said last named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage, of which

your orators are trustees, arising out of a certain agreement between the said the Missouri Pacific Railway Company and the said Union Pacific Railway Company, dated the 2d day of May, 1892; or said defendant the Missouri Pacific Railway Company otherwise claims to have some such lien, right or interest.

But your orators allege and show that all of the liens, interests, rights or mortgages of each and all of the defendants herein, who are hereinbefore in this paragraph designated and referred to as having or claiming liens, interests, rights or mortgages upon, in or affecting the property, or any part of the property, embraced and included in said first mortgage of the said Union Pacific Railroad Company to your orators as trustees are subsequent, junior and inferior to the lien of the said first mortgage to your orators, and are subject to your orators' rights, interests and liens as trustees thereunder and to the rights, interests and liens of the holders of the bonds secured thereby.

That the defendant S. H. H. Clark is a citizen and resident of the State of Missouri; that the defendant Oilver W. Mink is a citizen and a resident of the State of Massachusetts; that the defendants E. Ellery Anderson and Frederic R. Coudert are citizens and residents of the State of New York, and the defendant John W. Doane is a citizen and resident of the State of Illinois. That said last named individual defendants are the said Receivers heretofore appointed by this Honorable Court in said Ames cause now pending in this Court and hereinbefore recited, and as such Receivers and by reason of the fact that as such they claim some right to possess, hold and otherwise administer the property embraced in the mortgage to your orators as trustees (which said mortgage is the subject matter of this bill), they are made parties defendant to this bill of complaint.

Thirteenth. Your orators further allege and show that this is a suit arising under the constitution and laws of the United States, and especially under and by virtue of the several acts of congress hereinbefore referred to; and your orators further allege that the matters in controversy herein exceed the sum of $5,000, exclusive of interest and costs.

*Wherefore,* and forasmuch as your orators are rem-

ediless in the premises under and by the strict rules of the common law, and can have relief only in a Court of Equity, where matters of this nature are properly cognizable and reviewable, they file this their bill of complaint and pray the premises considered:

1. That the said mortgage or deed of trust November 1, 1865, hereinbefore mentioned and described, so executed and delivered by said Union Pacific Railway Company to Edwin D. Morgan and Oakes Ames, as trustees, and of which your orators are successor trustees, may be decreed to be a lien upon all the property—real, personal and mixed—rights, franchises, lands, railroads and telegraphs described in said mortgage and then owned or subsequently acquired by said Union Pacific Railroad Company, or the defendant, The Union Pacific Railway Company, and that the said defendant, The Union Pacific Railway Company, may be decreed to pay unto your orators all moneys now due or to become due and payable under and by virtue of said mortgage, and of the bonds issued thereunder and secured thereby, and under and by virtue of said agreement or supplemental indenture of March 12, 1868, executed by said Union Pacific Railroad Company to said original trustees of said first mortgage and their successors. And in default thereof that the said defendants above named, and all persons claiming under them, or either of them, may be forever barred and foreclosed of and from all equity of redemption and claim of, in and to the said mortgaged premises, and every part and parcel thereof, and that all and singular the said mortgaged premises with the appurtenances, property and effects, rights, immunities and franchises in said mortgage mentioned, may be sold under a decree of this Honorable Court, and that out of the money arising out of the sale thereof, after deducting from the proceeds of any such sale just allowances for all disbursements and expenses of the said sale, including attorneys' and counsel fees and the reasonable charges of your orators for services rendered as trustees, and for all expenses incurred by them in the premises, and all payments which may be made for taxes or assessments or otherwise on the said premises, or any part thereof, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be

at that time unpaid, whether or not the same shall previously have become due, and of the interest which shall at that time have accrued on said principal and be unpaid. And your orators further pray that an account may be taken of the bonds secured by said first mortgage of November 1st, 1865, of which your orators are trustees, and and of the amount due on said bonds for principal and interest, or either; and that the names of the lawful holders thereof may be ascertained.

2. That a Receiver or Receivers may be appointed according to the usual course and practice of this Court, with the usual power of Receivers in like cases, of all the property, lands, railroad, telegraph and franchises embraced in and covered by said mortgage, and that said Receiver or Receivers be empowered, instructed and directed to take possession of the railway, rolling stock, telegraph lines and appurtenances, and all extensions and branches thereof, and of all property embraced in said mortgage, and to operate the same, and to collect and receive the income and tolls thereof, and to account for the net earnings received therefrom (after deducting the expenses of operating the same, and the amount of taxes, assessments and prior charges upon said railroad and property,) and to hold and apply the same for the interest and benefit of said bond holders, secured by said mortgage, in conformity with the provisions thereof and as directed by this Court. And that the defendants The Union Pacific Railway Company, and the said Receivers S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R.Coudert be decreed to make such transfers or conveyances to said Receiver or Receivers appointed as herein prayed, and to the purchasers at any sale or sales of all or any part of said property as may be made in conformity with the provisions of said mortgage, or under the decree of this Honorable Court, which may be necessary and proper to put such purchaser or purchasers, or either of them, in possession of property so purchased.

3. Your orators further pray that a writ of injunction be issued out of and under the seal of this Honorable Court by one of your Honors, according to the form of the statute in such case made and provided, directing, commanding, enjoining and restraining the said defendants

and each of them from interfering with, transferring, selling or disposing of any of the property mentioned in and covered by said mortgage, or from taking possession of, levying upon or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by said mortgages, and that your orators may have such other or further relief in the premises as the nature and circumstances of this case may require and to this Honorable Court shall seem meet.

4. That your Honors may grant unto your orators a writ of subpœna, directed to defendants The Union Pacific Railway Company, the United States of America, the Union Trust Company of New York, J. Pierpont Morgan, Edwin F. Atkins, the Central Trust Company of New York, the Central Pacific Railroad Company, the Southern Pacific Company, the St. Joseph & Grand Island Railroad Company, the Kansas City & Omaha Railroad Company, the Oregon Railway & Navigation Company, the Oregon Short Line & Utah Northern Railway Company, the Union Pacific, Lincoln & Colorado Railway Company, the Chicago & Northwestern Railway Company, the Omaha & Republican Valley Railway Company, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, the Kearney & Black Hills Railway Company, Frank H. Peavy, E. C. Michener and Charles T. Peavy, co-partners under the firm name and style of F. H. Peavy & Company; the Union Pacific, Denver & Gulf Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Salina & Southwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, the Chicago Kansas & Nebraska Railway Company, the Missouri Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, thereby commanding each of them, at a certain time and under a certain penalty therein to be named, personally to be and appear before this Honorable Court, then and there to answer all and singular the matters aforesaid, but not under oath (answer under oath being hereby expressly waived), and to stand to and abide by and perform such order, direction and decree as shall be made herein; and as to your Honors shall seem equitable and just.

And as to said parties who are properly defendants

to this bill of complaint, and who may be out of the juris
diction of this Court, your orators pray that process may
be issued to make them or either of them parties if they
should come within such jurisdiction, or that if they should
not come within such jurisdiction such proceedings may
be had in regard to such defendants by publication or
otherwise to conclude them in this behalf as may be au
thorized by or according to the form of the statute in such
case made and provided.

And your orators as in duty bound will ever pray.

F. GORDON DEXTER,
OLIVER AMES, Second,
Complainants.

By WINSLOW S. PIERCE,
R. S. HALL.
Counsel and Solicitors for said Complainants.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, } ss.

F. Gordon Dexter and Oliver Ames, Second, bein
duly sworn, say that they are the complainants in th
foregoing bill of complaint; that they have read the sai
bill of complaint and know the contents thereof; that th
same is true of their own knowledge except as to thos
matters therein stated to be alleged on information an
belief, and that as to those matters they believe it to b
true.

F. GORDON DEXTER,
OLIVER AMES, Second.

Sworn to and subscribed before me this 15th day
January, 1895.

[SEAL]

JAMES G. HARRIS,
Notary Public.

Endorsed:
Filed January 21, 1895.

## Answer of the Central Trust Company New York.

The following answer to original bill of complaint herein, was filed in the Courts and upon the dates following:

In the Circuit Court of the United States for District of Nebraska, April 12, 1895.

In the Circuit Court of the United States for Southern District of Iowa, April 13, 1895.

In the Circuit Court of the United States for District of Wyoming, April 13, 1895.

In the Circuit Court of the United States for District of Colorado, April 13, 1895

In the third District Court of Utah Territory, April 15, 1895.

(*Title of court and cause omitted.*)

The answer of the defendant Central Trust Company of New York, trustee, to the bill of complaint of F. Gordon Dexter and Oliver Ames, Second, trustees.

This defendant, now and at all times saving and reserving all benefit and advantage of exception which can or may be had or taken to the said bill of complaint, for answer thereunto saith:

First. This defendant is informed and believes that the allegations contained in the articles or paragraphs of said bill numbered first and second are substantially true, but for greater certainty this defendant prays that reference may be had to the several acts referred to in said articles or paragraphs of said bill, for a particular statement of the terms and effect of said acts.

Second. This defendant knows not and is not informed save by said bill of complaint as to whether the allegations or any thereof contained in the article or paragraph of said bill of complaint numbered third are true or not, and it therefore denies the same and calls for strict proof thereof.

Third. This defendant believes it to be true that The Union Pacific Railroad Company made and executed certain bonds of the general character and form set forth

in the copy of the first mortgage attached to said bill of complaint and Marked Exhibit "A," but as to the amount of such bonds which were issued, or as to whether the other matters and things set forth in the article or paragraph of said bill of complaint numbered fourth are true or not, this defendant has no knowledge or information sufficient to form a belief.

Fourth. This defendant is informed and believes it to be true that The Union Pacific Railroad Company made, executed and delivered a certain mortgage or deed of trust to Edwin D. Morgan and Oakes Ames, a copy of which mortgage is attached to said bill of complaint as part thereof marked Exhibit "A," but for a particular statement of the term and provisions of said mortgage this defendant prays that reference may be had to the original thereof on the hearing of this cause. As to the other matters and things set forth in the article or paragraph of said bill of complaint numbered fifth, this defendant has no knowledge or information sufficient to form a belief.

Fifth. This defendant knows not and is not informed, save by said bill of complaint, whether the allegations or any thereof contained in the articles or paragraphs of said bill of complaint numbered sixth, seventh, eighth and ninth are true or not, and it calls upon the complainants to make proof thereof.

Sixth. This defendant believes that the allegations contained in the article or paragraph of said bill of complaint numbered tenth with respect to Court proceedings therein set forth are substantially true, but for greater certainty prays that reference may be had to the record of said proceedings upon the hearing of this cause.

Seventh. This defendant believes that the allegations contained in the article or paragraph of said bill of complaint numbered eleventh with respect to the possession, custody and control by this Court of the property covered by the complainant's mortgage and with respect to the insolvency of The Union Pacific Railway Company are true, but as to the other matters and things contained and set forth in said article or paragraph of said bill of complaint numbered eleventh, this defendant has no knowledge or information sufficient to form a belief.

Eighth. This defendant admits that it is a corporation organized and existing under the laws of the State of New York, and is a citizen and resident of said State of New York, and that it has and claims a lien upon or interest in some part of the property claimed by complainants to be conveyed by the mortgage of which complainants are alleged to be trustees, and which is set up in said bill of complaint and this defendant alleges that on or about the 1st day of October, 1885, The Union Pacific Railway Company, defendant herein, made, executed and delivered to this defendant, as trustee, a certain mortgage or deed of trust known as the Omaha bridge renewal mortgage, wherein and whereby it granted and conveyed to this defendant all and singular the bridge, approaches and appurtenances thereto, over the Missouri River between Council Bluffs, Iowa, and Omaha, Nebraska, mentioned and described in the act of Congress, approved February 24, 1871, together with the rents, earnings, issues, tol s, incomes and profits thereof, including all parts and portions of said bridge then constructed or thereafter to be constructed, and the depots at Council Bluffs and Omaha aforesaid, and the railroad thereover, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the lines of any railroad that were then or should thereafter be constructed to the Missouri River at Council Bluffs, Iowa, or Omaha, Nebraska, and also all the estates, lines, rights of way, as well then held by the company as to be thereafter acquired by it, and all the rights and privileges of the company of, in and to the said bridge, approaches and appurtenances, or touching, concerning or appertaining to maintenance, use and occupation thereof, and and also all and singular the franchises then owned, possessed or acquired, or which should thereafter be owned, possessed or acquired by said railway company in respect of said bridge, approaches and appurtenances thereto and railroad thereover. Said mortgage was given as security for the payment of the principal and interest of a series of bonds known as Omaha bridge renewal bonds, each being for the sum of $1,000 and bearing date October 1, 1885, and payable October 1, 1915, with interest at the rate of five per cent. per annum, payable semi-annually

in the 1st days of April and October in each year. This defendant alleges that under and in pursuance of the terms of said mortgage 1056 bonds, amounting to the principal sum of $1,056,000, have been issued and are now outstanding, and together with the coupons for interest upon said bonds are secured by the lien of said Omaha bridge renewal mortgage; and this defendant denies that the lien, interest, rights or mortgage of this defendant upon the property covered by and embraced in said Omaha bridge renewal mortgage are subsequent, junior or inferior to the lien of the first mortgage set up in the bill of complaint of complainants, or are subject to complainant's rights, interests or liens as trustees thereunder, or to the rights, interests or liens of the holders of the bonds secured thereby. This defendant prays leave to refer to the original of said Omaha bridge renewal mortgage and to the record thereof upon the hearing of this cause for a more particular statement of the terms and provisions of said mortgage and of the bonds issued thereunder, and of the property thereby conveyed and subjected to the lien thereof.

This defendant is informed and believes to be true the allegations contained in the twelfth article or paragraph of said bill of complaint with respect to the residence and citizenship of S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, and that said last named individuals are the Receivers appointed by this Honorable Court in the so-called Ames cause now pending in this Court and mentioned in said bill of complaint. This defendant knows not and is not informed save by said bill whether any of the other matters and things set forth in the article or paragraph of said bill of complaint numbered twelfth are true or not.

*Wherefore* this defendant prays the judgment of this Honorable Court that it be hence dismissed, with its lawful costs and disbursements in this behalf most wrongfully sustained.

CENTRAL TRUST COMPANY OF NEW YORK,
By G. SHERMAN, Vice-President.
BUTLER, STILLMAN & HUBBARD,
Solicitors for Defendant Central Trust Company of New York.
ADRIAN H. JOLINE,
Of Counsel.

## Answer of Morgan & Atkins, Trustees, to original bill of complaint herein.

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IN THE UNITED STATES CIRCUIT COURT FOR THE DISTRICTS OF NEBRASKA AND SOUTHERN IOWA.

*(Title of cause omitted.)*

J. Pierpont Morgan and Edwin F. Atkins, Trustees, defendants in the above entitled suit, for answer to the bill of Complaint therein or to so much thereof as they are advised that it is material or necessary for them to make answer unto, answering, say:

I. They admit the allegations contained in the paragraph of said bill of complaint numbered First.

II. They admit that The Union Pacific Railway Company was duly ncorporated and organized under and by virtue of the Acts of Congress of the United States of July 1st, 1862 and July 2nd, 1864; but they do not admit that the provisions of said acts of Congress referred to in the paragraph of said bill numbered Second are correctly therein set forth, and these defendants refer to said several acts of Congress for the terms and provisions thereof.

III. They have no knowledge or information sufficient to form a belief whether the President of the United States, by Executive Orders, fixed the eastern terminus of the Union Pacific Railroad on the Iowa Bank of the Missouri River, as alleged in the paragraph of said Bill of Complaint numbered Third; they admit that said Union Pacific Railway Company prior to the date of consolidation mentioned in said Bill of Complaint constructed and completed a line of railroad with the appurtenances thereto belonging from Omaha in the State of Nebraska westwardly through the states (then territories) of Nebraska, Colorado and Wyoming, and into the territory of Utah to a connection with the railroad of the Central Pacific Railroad Company, at a point about five miles west of Ogden in said Territory of Utah, and also constructed a bridge over the Missouri River between said Omaha in the State of Nebraska, and Council Bluffs in the State of Iowa, and that said lines of railroad

and telegraph and bridge with the appurtenances thereof were constructed in accordance with the several acts of congress authorizing the same; but these defendants deny that the bridge over the Missouri River between Council Bluffs in the State of Iowa and Omaha in the State of Nebraska is embraced in or included in the First Mortgage of said Union Pacific Railroad Company of November 1st, 1865.

IV. They admit that the said Union Pacific Railroad Company made, executed and issued certain bonds as its First Mortgage bonds to the aggregate amount of $27,229,000 or thereabouts and executed its mortgage to secure the same but they have no knowledge or information sufficient to form a belief whether Exhibit A attached to the Bill of Complaint is a true copy of said mortgage, or whether a copy of each of said bonds (except as to the serial number, date and the signatures of the officers of said railroad company) is therein set forth, or whether said Railroad Company determined or resolved to issue its bonds as alleged in the paragraph of said bill of complaint numbered Fourth.

V. They admit that said Union Pacific Railroad Company on or about the 1st day of November, 1865, made, executed and delivered to Edwin D. Morgan, of the City of New York, and Oakes Ames, of Easton, in the State of Massachusetts, as trustees, its certain mortgage or deed of trust, but they have no knowledge or information sufficient to form a belief whether Exhibit A attached to the Bill of Complaint is a true copy of said mortgage or whether said Railroad Company did thereby bargain, sell, assign, transfer, and set over, enfeoff, convey or confirm unto the said Edwin D. Morgan and Oakes Ames as trustees the property described in the paragraph of said bill numbered Fifth, but the defendants refer to the said mortgage for the terms of provisions thereof and leave the complainants to make such proof as they may see fit.

VI. They admit that said Union Pacific Railroad Company executed an agreement supplemental to its First Mortgage and caused all or nearly all of its First Mortgage bonds to be stamped with a provision to the effect that the same should be payable in United States Gold coin, but your orators have no information sufficient to form a belief whether Exhibit B to the Bill of Complaint is a true copy

of said agreement and therefore leave complainants to make such proof thereof as they may see fit.

VII. They admit that said Edwin D. Morgan and Oakes Ames accepted the mortgage executed to them by the Union Pacific Railroad Company to secure its first mortgage bonds and that the said Edwin D. Morgan and Oakes Ames have died.

They also admit that Oliver Ames and Frederick L. Ames have died but they have no information sufficient to form a belief whether said Oliver Ames was duly appointed a successor trustee under said mortgage in place of Oakes Ames, deceased, or whether the complainant F. Gordon Dexter was duly appointed a successor trustee in place of Edwin L. Ames or whether Frederick L. Ames was duly appointed a successor trustee in place of Oliver Ames, deceased, or whether the complainant Oliver Ames, Second, was duly appointed trustee in place of Frederick L. Ames, deceased. They admit that said Union Pacific Railroad Company issued negotiated and delivered $27,229,000 or thereabouts of its said so-called First Mortgage Bonds, and that a large amount of said bonds are outstanding; but your orators have no information sufficient to form a belief as to the precise amount of said bonds which were issued, negotiated and delivered, or as to the precise amount of said bonds issued or outstanding or as to the date of said bonds and the maturity thereof.

IX. They admit that the defendant The Union Pacific Railway Company made default in the payment of the interest and coupons representing interest which became due on its first mortgage bonds or some portion thereof was demanded by the holder of the bonds, and that such default continued until on or about the 27th day of November, 1894, when the Receivers mentioned in the bill of complaint offered to pay said defaulted interest at the face value of the coupons representing the same but not including interest accrued on said coupons; that a portion of such defaulted interest and of said coupons has been paid by the Receivers at the face of said coupons, but no part of the interest accrued upon said defaulted coupons has been paid or tendered by said Receivers, or by the Union Pacific Railroad Company, on the first day of January, 1895, was paid by said Receivers or by the Union

Pacific Railway Company or otherwise; and that said defendant Railway Company wholly made default in the payment of said interest and coupons which fell due on the first day of January, 1895, and the same and every part thereof remained unpaid and in default at the time of filing said bill of complaint, although payment of said interest and coupons, or of some part thereof, was duly demanded.

X. They admit the allegations contained in the paragraph of said bill numbered Tenth.

XI. They admit the allegations contained in the paragraph of said bill numbered Eleventh, excepting the allegations contained therein as to terms and provisions of the mortgage securing said so called first mortgage bonds, and as to the effect thereof, and as to those allegations they have no knowledge or information sufficient to form a belief and leave the complainants to make proof thereof.

XII. They admit that the defendant J. Pierpont Morgan is a citizen and resident of the State of New York and that the defendant Edwin F. Atkins, is a citizen and resident of the State of Massachustets.

XIII. Further answering, these defendants aver that on or about the first day of April, 1871, said Union Pacific Railroad Company (being thereunto duly authorized by law, to-wit, by the act of Congress approved February 24, 1871, entitled "An Act to authorize the Union Pacific Railroad Company to issue its bonds and construct a bridge across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa," and due corporate action being had, duly made, executed and delivered its mortgage, or deed of trust, dated the first day of April, 1871, to John Edgar Thompson, of Philadelphia, John Pierpont Morgan, of New York, and Elisha Atkins, of Boston, and therein and thereby granted, bargained, sold, transferred, set over, enfeoffed, conveyed and confirmed unto the said John Edgar Thompson, John Pierpont Morgan, and Elisha Atkins, as trustees, and to their heirs and successors, and the survivors and survivor of them, and the heirs of such survivor, all and singular the bridge of said Union Pacific Railroad Company over the River Missouri between Omaha and Council Bluffs and the approaches thereto and the appurtenances belonging thereto, including all parts and portions of the said bridge then constructed or thereafter to be constructed, and the depots

at Council Bluffs and Omaha aforesaid, and the lines and tracks required to perfect the said bridge and its approaches and appurtenances and to connect the same with the neighboring lines, including as well the lines and tracks then constructed as those which might thereafter be constructed and also all estates, terms and rights of way for the said bridge, its approaches and appurtenances, as well as those then held by the company as to be thereafter acquired by it, and all the rights and privileges of said Company of, in or to the said bridge, approaches or appurtenaces, or touching, concerning or appertaining to the maintenance, use and occupation thereof. The said mortgage was executed by said Union Pacific Railroad Company to secure a certain issue of special bridge bonds for the total sum of $2,500,000 United States gold coin or £500,000, British Sterling money, in 2500 bonds numbered from 1 to 2500 inclusive, for the sum of $1,000 United States gold coin, or £200 British sterling money each, as set forth in said mortgage, a copy of which mortgage, marked exhibit A is hereto attached and made a part of this answer with the same effect as if here set forth at length.

That thereupon and on or about the 27th day of September, 1871, the said Union Pacific Railroad Company, made, executed and delivered to said John Edgar Thompson, John Pierpont Morgan and Elisha Atkins its certain supplemental mortgage dated the 27th day of September, 1871, copy of which supplemental mortgage marked Exhibit B is hereto attached and made a part of this answer with the same effect as if here set forth at length.

That the said Union Pacific Railroad Company, pursuant to said act of Congress approved February, 24, 1871, and due corporate action having been had, and under, and in accordance with the provisions of said mortgage dated April 1st, 1871, and said supplemental mortgage dated the 27th day of September, 1871, made, executed and delivered its said bonds for the aggregate total sum of $2,500,000 United States gold coin or £500,000 British sterling money, in 2500 bonds numbered from 1 to 2500 inclusive, said bonds having attached thereto the coupons for the interest to become due thereon as provided in said mortgage, in and by each of which bonds said Union Pacific Railroad Company bound itself to pay to Edgar Thompson, or bearer, on the

1st day of April, 1896, (unless sooner redeemed by the sinking fund clause) at his option two hundred pounds British sterling money or one thousand dollars United States gold coin, and to pay in the meantime interest on the said principal sum of £200 British sterling money or $1,000 United States gold coin, at the rate of eight per centum per annum, free from taxes in the United States, by half-yearly payments, each of eight pounds, five shillings and nine-pence, British sterling money, or forty dollars United States gold coin, on the first days of April and October in each year, the first payment to be made on the 1st day of October, 1871, upon presentation and surrender of the relative interest coupons. Each of said bonds was the tenor of Exhibit C hereto attached and which exhibit is made a part of this answer with the same effect as if here set forth at length.

That in and by said supplemental mortgage dated the 27th day of September, 1871, it was provided, among other things, as follows: That all the said bonds should bear interest at the rate of two-fifths of one per cent. per annum, in addition to the annual eight per cent. interest provided for in said mortgage dated April 1st, 1871, which said interest of two-fifths of one per cent. should be paid in a gross of ten per cent. upon the nominal amount of the bond at the time when the principal of the bond became payable under the terms or conditions of said indenture, excepting always that those bonds which should be drawn and redeemed at ten per cent. premium before maturity by the sinking fund should not carry the said interest of two-fifths of one per cent; and the trustees under said mortgage were authorized and empowered to retain and deduct, and to pay and discharge, such instalment of interest out of any funds or moneys of the company coming in their hands.

That all of the said bonds and the coupons for interest thereon were duly exectued and issued by said Union Pacific Railway Company and the certificate thereon endorsed was signed by the trustees under said mortgage and supplemental mortgage in accordance with the provisions of said bonds and of said mortgage and supplemental mortgage, and said bonds and coupons were duly negotiated and delivered for value to a large number of persons. That after the execution of said mortgage and supplemental mortgage, and

prior to the 2nd day of December, 1874, the said John Edgar Thompson died, and Frederick L. Ames, of Easton, Massachusetts, was duly appointed in accordance with the provisions of said mortgage as successor to said John Edgar Thompson, deceased, That on or about the 9th day of December, 1888, the said Elisha Atkins died, and on or about the 11th day of March, 1889, the defendant Edwin F. Atkins was duly appointed under and in accordance with the provisions of said mortgage dated April 1st, 1871, a trustee under said mortgage as successor to said Elisha Atkins, deceased. That on or about the 10th day of June, 1889, a deed was executed by said Edwin F. Atkins whereby the said mortgaged premises were duly vested in said Edwin F. Atkins jointly with said John Pierpont Morgan and Frederick L. Ames as trustee, and the said Edwin F. Atkins accepted the trust under said mortgage and supplemental mortgage. That on the 13th day of September, 1893, the said Frederick L. Ames died, and that no one has been appointed a trustee under said mortgage as successor to said Frederick L. Ames, deceased, and that these defendants, John Pierpont Morgan and Edwin F. Atkins, are now the sole trustees under said mortgage or deed of trust.

That under and pursuant to the provisions of said mortgage and supplemental mortgage there have been redeemed from time to time certain bonds issued under said mortgage and supplemental mortgage or deed of trust to the aggregate amount of $1,992,000, par value, and there now remain outstanding and unpaid in the hands of a large number of presons, who are the lawful holders and owners thereof for value, $508,000, par value, of said bonds issued under and secured by said mortgage and supplemental mortgage or deed of trust.

XIV. Further answering these defendants deny that the said mortgage of the Union Pacific Railroad Company, dated November 1st, 1865, mentioned in said bill of complaint, covers the said bridge and appurtenances or the tolls and incomes thereof, and these defendants aver that the said mortgage dated April 1st, 1871, under which these defendants are trustees is a first and paramount lien upon said bridge and property described in said mortgage and the tolls thereof, and that the lien of said mortgage is prior and superior to the liens and claims of said complainants or of

any other parties to this suit. Further answering these defendants aver that the said mortgage dated April 1st, 1871, was duly recorded in the office of the Recorder of Douglas County, Nebraska, on the 3rd day of October, 1871, and that it was duly recorded in the office of the Recorder of the County of Pottawattamie in the state of Iowa, on the 3d day of October, 1871, and that said mortgage of the Union Pacific Railroad Company, dated the 1st day of November, 1865, mentioned in the bill of complaint herein has not been recorded in said Pottawattamie County, State of Iowa. These defendants aver that they had no knowledge or notice that it was claimed that the said last mentioned mortgage covered or was intended to cover the said premises covered by said mortgage of April 1st, 1871; and they aver that the trustees under said mortgage accepted the same and that the holders of bonds issued thereunder purchased and acquired their bonds for value without any knowledge or notice that said mortgage dated November 1st, 1865 covered or was intended to cover the said premises described in said mortgage dated April 1st, 1871.

XV. These defendants deny all charges of unlawful confederation set forth in the complaint and submit and insist that the matters and things set forth in the complaint or any of them do not entitle the plaintiff in a Court of equity to the relief prayed for against these defendants; and these defendants having fully answered ask to be hence dismissed with their costs.

This answer is signed by the solicitors of these defendants pursuant to the stipulation filed in this cause.

SEWARD, GUTHRIE, MORAWETZ & STEELE,
Solicitors for defendants J. Pierpont Morgan & Edwin F. Atkins, Trustees, and
WHARTON & BAIRD,
Solicitors for defendants J. Pierpont Morgan & Edwin F. Atkins, Trustees.

Above answer filed in Nebraska and Iowa Courts upon October 28, 1895.

## Orders of reference to Master for taking of testimony on bill for foreclosure.

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IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EIGHTH JUDICIAL CIRCUIT, DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH AND SOUTHERN IOWA.

(*Title of cause omitted.*)

Now, on motion of the solicitors for the complainants in the above-entitled cause, and on the consent of the defendants hereto attached and filed herein, it is

ORDERED, that this cause be referred to Hon. William D. Cornish, of St. Paul, Minnesota, as Special Master, to take and report with all convenient speed evidence and his findings and conclusions upon the following questions and matters:

FIRST. The number and amount of bonds issued and outstanding and secured by the mortgage to the complainants, as trustees, and the amount due thereon and the amount of overdue coupons with interest thereon to the first day of May, 1897.

SECOND. Said Special Master will also take evidence and report what railway properties, rolling stock, equipment, terminal properties and other properties are subject to the lien of the said mortgage to the complainants as trustees, either as property existing at the time of the execution of said mortgage or as acquired since such execution.

THIRD. Said Special Master will also take evidence and report upon all such other matters included in or pertinent to the issues herein as may be brought before him by any of the parties hereto; and it is ordered that said Special Master take evidence on all questions and matters arising in this cause, either within or without the Eighth Judicial Circuit, giving at least five days notice of the original time and place designated by him for the taking of such testimony, and said Special Master may adjourn the same from time to time to such times and places as he may appoint; and he is authorized and empowered to take the testimony of

witnesses in the cities of New York, Boston, Washington elsewhere, as may be most convenient.

FOURTH. As to such testimony, said Special Mast is authorized and directed, after duly certifying and authe ticating the same, to return the same, together with h report thereon, to the Clerk of the Circuit Court of the Unit States for the District of (a)——

WALTER H. SANBORN,
Dated March 25, 1897. Circuit Judge.

The above and foregoing order signed and dated above was filed and entered as follows:

In Nebraska, March 26, 1897.
In Iowa, March 27, 1897.
In Colorado, March 27, 1897.
In Wyoming, March 27, 1897.
In Utah, March 27, 1897.

NOTE—(a) This blank is filled in orders on file as follows:
In Nebraska, "Nebraska." In Iowa, "Iowa."
In Colorado, "Colorado." In Wyoming, "Wyoming."
In Utah, "Utah."

**Stipulation to entry of foregoing order.**

The undersigned parties hereto hereby consent to t entry without further notice of the foregoing order.

The Union Pacific Railway Company,
By W. R. KELLY,
Its Solici

The United States of America,
By GEO. HOADLEY,
Its Solicitor in the Premises.

J. Pierpont Morgan and Edwin F. Atkins, Trustees,
By SEWARD, GUTHRIE, MORAWITZ & STEELE,
Their Solicitor

The Central Trust Company of New York, Trustee,
By BUTLER, STILLMAN & HUBBARD,
Its Solicitors

The Union Trust Company of New York, Trustees,
By WHEELER H. PECKHAM,
Its Counsel

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, Frederic R. Coudert, Receivers,
By W. R. KELLY,
Their General Solicitor.

The St. Joseph and Grand Island Railroad Company,
By M. A. REED,
Its Solicitor.

The Kansas City and Omaha Railroad Company,
By M. A. REED,
Its Solicitor.

The Oregon Railway and Navigation Company,
By W. W. COTTON,
By CHARLES C. BEAMAN,
Its Solicitor.

The Union Pacific, Lincoln and Colorado Railroad Company,
By W. R. KELLY,
Its Solicitor.

The Chicago and Northwestern Railway Company,
By LLOYD W. BOWERS,
Its Solicitor.

The Oregon Short Line & Utah Northern Ry. Co.,
By W. R. KELLY,
Its Solicitor.

The Omaha and Republican Valley Railroad Company,
By W. R. KELLY,
Its Solicitor.

The Chicago, St. Paul, Minneapolis and Omaha Railroad Company,
By

Its Solicitor.

The Kearney and Black Hills Railway Company,
By W. R. KELLY,
Its Solicitor.

F. H. Peavey et al., copartners under the firm name and style of F. H. Peavy & Co.,
By J. H. McCULLOCH,
Their Solicitor.

The Union Pacific, Denver and Gulf Railroad Company,
By W. R. KELLY,
Its Solicitor.

The Chicago, Milwaukee and St. Paul Railway Company,
By
Its Solicitor.

The Salina and Southwestern Railway Company,
By W. R. KELLY,
Its Solicitor.

The Chicago, Rock Island and Pacific Railway Company,
By
Its Solicitor.

The Missouri Pacific Railway Company,
By ALEX G. COCHRAN,
Its Solicitor.

**Motion and order for dismissal of bill of complaint.**

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IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

(*Title of cause omitted.*)

And now come the complainants by Winslow S. Pierce and R. S. Hall, their Solicitors, and consent and move that the bill of complaint and supplemental bill of complaint herein be dismissed as to the defendants, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, the Chicago,

Kansas & Nebraska Railway Company, The Central Pacific Railway Company and the Southern Pacific Company.
F. Gordon Dexter and Oliver Ames, Trustees, Complainants,

By WINSLOW S. PIERCE,
R. S. HALL,
Their Solicitors.

Upon the foregoing consent and motion it is hereby ordered that the bill of complaint and supplemental bill of complaint in the above entitled cause be and the same are hereby dismissed as against the defendants The Chicago, Rock Island & Pacific Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, the Chicago, Kansas & Nebraska Railway Company, The Central Pacific Railway Company, and the Southern Pacific Company.

WALTER H. SANBORN,
Circuit Judge.

Filed July 29, 1897.

**Motion and order for dismissal of bill of complaint.**

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IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

*(Title of cause omitted.)*

And now come the complainants by Winslow S. Pierce and R. S. Hall, their solicitors, and consent and move that the bill of complaint and supplemental bill of complaint herein be dismissed as to the defendants, The Chicago, St. Paul, Minneapolis & Omaha Railroad Company, the Chicago Kansas & Nebraska Railway Company, The Central Pacific Railway Company and the Southern Pacific Company.
F. Gordon Dexter and Oliver Ames, Trustees, Complainants,

By WINSLOW S. PIERCE,
R. S. HALL,
Their Solicitors.

Upon the foregoing consent and motion it is hereby ordered that the bill of complaint and supplemental bill of complaint in the above entitled cause be and the same

are hereby dismissed as against the defendants The Chicago, St. Paul, Minneapolis & Omaha Railroad Company, the Chicago, Kansas & Nebraska Railway Company, the Central Pacific Railway Company and the Southern Pacific Company.

WALTER H. SANBORN,
Circuit Judge.

Dated and filed, July 29, 1897.

**Report of Special Master upon the issues herein, under order of reference dated March 25, 1897.**

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IN THE CIRCUIT COURTS OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH AND SOUTHERN DISTRICT OF IOWA.

(*Title of cause omitted.*)

*To the Honorable, the Circuit Court of the United States for the District and in the cause above entitled:*

I respectfully report that, acting under and upon the authority conferred upon me by this Court by its order of reference, dated March 25, 1897, and thereafter filed and entered herein, I have, upon due notice given, taken the evidence offered by the several parties to this cause upon the issues herein, and have certified and authenticated such evidence, and returned the same to this Court in this cause.

And I further report that the several questions and issues upon which I am, by the terms of said order of reference, required to report my findings and conclusions have been submitted to me upon the pleadings, the evidence so as aforesaid taken and returned by me, and the arguments and claims of counsel thereon;

Now, having given such questions and issues as so submitted my full and careful consideration, I find and report the facts in respect thereto to be as follows:

INCORPORATION OF UNION PACIFIC RAILROAD COMPANY.

1. That the Union Pacific Railroad Company was duly incorporated and organized under and by virtue of an Act

of the Congress of the United States entitled, "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, Military and other purposes," approved July 1, 1862; and that, as so organized, said railroad company possessed the powers, and was made subject to the duties, obligations and restrictions granted and prescribed in said Act.

2. That said Act of Congress was amended by an Act entitled, "An Act to amend an Act entitled, 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and secure to the Government the use of the same for postal, military and other purposes,' approved July 1, 1862," approved July 2, 1864, and that thereafter other laws were enacted by Congress amendatory of, and supplementary to, said Acts of July 1, 1862, and July 2, 1864.

3. That said the Union Pacific Railroad Company continued its corporate existence under said original Act and said amendatory and supplemental Acts, with such powers and subject to such duties obligations and restrictions as were by said Acts granted and imposed.

AUTHORITY TO BUILD ROAD.

4. That said the Union Pacific Railroad Company, as so incorporated, was by said Acts of Congress, authorized to "lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph, with the appurtenances, from a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska, at a point to be fixed by the President of the United States after actual surveys, thence running westerly upon the most direct, central and practicable route, through the territories of the United States, to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad of California," and also "to construct a single line of railroad and telegraph from a point on the western boundry of the State of Iowa to be fixed by the President of the United States upon the most direct and practicable route to be subject to his ap-

proval, so as to form a connection with the line of said company on the 100th meridian of longitude aforesaid, from the point of commencement on the western boundry of the State of Iowa." And said railroad company was, by the terms of said Acts, vested with all the powers, privileges and immunities necessary to carry into effect the purposes of said Acts as therein set forth.

GRANT OF RIGHT OF WAY.

5. That there was granted to said railroad company under said original Act of Congress, the right of way through the public lands of the United States, to the extent of two hundred (200) feet in width on each side of said railroad where it passed over such public lands, including all necessary grounds for stations, buildings, workshops and depots, machine shops, switches, side tracks, turntables and water stations, for the construction of said railroad and telegraph line, with the right, power and authority to said company to take from the public lands adjacent to the line of said railroad, earth, stone, timber and other materials for the construction thereof.

6. That by the terms of said Act of July 2, 1864, authority was granted to said railroad company to acquire by purchase or condemnation any lands or premises which might be necessary and proper for the construction and working of said road, not exceeding one hundred feet (100 ft.) on each side of its center line, unless a greater width be required for the purpose of excavation and embankment, and also any lands or premises that might be necessary and proper for turnouts, standing places for cars, depots, station houses, or any other structures required for the construction and operation of said road.

FIXING OF EASTERN TERMINUS.

7. That on the 7th day of March, 1864, Abraham Lincoln, President of the United States, acting in pursuance of the provisions of said Act of Congress approved July 1, 1862, did, upon the application of said railroad company, designate and established as a point on the western boundry of the State of Iowa from which the Union Pacific Railroad Company should construct a line of railroad and telegraph under the authority of said Act, a point on the west-

ern boundry of the State of Iowa, east of and opposite to the east line of Section 10, in Township 15, North of Range 13, east of the Sixth Principal Meridian, in the territory of Nebraska.

COMMENCEMENT OF CONSTRUCTION.

8. That said the Union Pacific Railroad Company, acting under the authority of said Acts of Congress of July 1, 1862, and July 2, 1864, commenced the construction of its line of railroad and telegraph upon the route designated in said Acts, during the year 1864, and that it completed thereof what was designated as the "first section of forty miles west from the City of Omaha, Nebraska Territory," prior to December 23, 1865.

FIRST REPORT OF COMMISSIONERS.

9. That the President of the United States, on December 23, 1865, pursuant to the provisions of section four of said Act of July 1, 1862, and section six of said act of July 2, 1864, appointed Lieut. Col. J. H. Simpson, Hon. Samuel R. Curtis and Hon. William M. White, as Commissioners to examine and report to him in relation to the portion of said railway and telegraph line so constructed, and that thereafter said Commissioners severally qualified by taking an oath of office.

10. That on the 8th day of January, 1866, said railroad company by Thomas C. Durant, its vice president, made its report to said Commissioners, of the construction and completion by said railroad company of said railroad and telegraph line as extending from the westerly bank of the Missouri River, near the north line of Section 10, Township 15, Range 13, Nebraska Territory, a distance of forty miles westerly on the located line of said road.

11. That thereafter, and on the 23rd day of January, 1866, said Commissioners submitted their report upon said section of forty miles of said railroad and telegraph line, which report was addressed to Hon. James Harlan, Secretary of the Interior of the United States, and, among other things, stated therein that the railroad company "have commenced their road at a point on the west bank of the Missouri River, as near the initial point fixed by the President as is at present practicable, and have constructed it in the line indicated by the accompanying map," and that

the work submitted and reported upon "presents forty miles of road supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipment, furniture, and all other appurtenances of a first-class railroad, suited to the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon."

12. That said report of said Commissioners was, on the 24th day of January, 1866, submitted to the President of the United States by Hon. James Harlan, Secretary of the Interior, with the recommendation that the same be accepted and proper steps be ordered for the issue of the bonds and land grants due the company, agreeably to law, and that on the same day the President of the United States entered the following endorsements upon said report of the Secretary of the Interior: "Executive Mansion, January 24, 1866. The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect."

(Signed) "ANDREW JOHNSON."

POINT OF COMMENCEMENT OF CONSTRUCTION.

13. That the eastern terminus of the section of said railroad so reported upon by said commissioners was, in fact, a point on the west bank of the Missouri River and within and near the northeast corner of said section 10, Township 15, Range 13, in Nebraska.

14. That thereafter the construction of said railroad and telegraph line was continued along the designated route westerly through the territories of Nebraska, Colorado and Wyoming, and into the Territory of Utah.

FURTHER REPORTS OF COMMISSIONERS.

15. That the successive sections of said railroad and telegraph line as the same were constructed and completed to the one-thousandth mile-post west from Omaha, were in like manner from time to time reported upon by said railroad company to Commissioners appointed by the President of the United States, and qualified as such under said provisions of said Acts of Congress, and were by said Commissioners reported upon and approved by the Secretary

of the Interior, who endorsed upon the several reports of said Commissioners like recommendations as to the issuance of bonds and land grants to the company, and submitted the same to the President of the United States; and that the President of the United States endorsed upon such recommendations his approval thereof, and his direction for the issuance of bonds and land grants on account thereof, under the terms of said Acts.

FINAL REPORT OF COMMISSIONERS.

16. That on the 13th day of March, 1869, the President of the United States, pursuant to the provisions of the sixth section of the Act entitled "An Act to Amend an Act entitled, 'an Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes,'" approved July 2, 1864, appointed James F. Wilson, General G. K. Warren and I. N. Morris as Commissioners to examine and report to the President of the United States upon the road and telegraph line of the Union Pacific Railroad Company, as contemplated and specified by said Acts of Congress, and that said Commissioners, having qualified by severally taking their oaths of office, made their examination and reported to Hon. J. D. Cox, Secretary of the Interior, that they had examined and found completed, and recommended the acceptance of the thirty-ninth section of twenty miles of said railroad, the fortieth section of twenty miles of said railroad, the forty-first section of twenty miles of said railroad, the forty-second section of twenty miles of said railroad, and the forty-third section of 5.88 miles of said railroad, whereupon the Secretary of the Interior reported to the President of the United States, on July 15, 1869, transmitting the five reports of said Commissioners, Gen. G. K. Warren and James F. Wilson above referred to, recommending the acceptance of the same and the issue of bonds and of patents of lands due on account of said section of 85.88 miles of railroad and telegraph lines commencing on the road of said Railroad Company at the 1,000th mile-post west from Omaha and terminating at the 1085.88 mile-post, agreeably to the provisions of the act of July 1, 1862, and the acts amendatory thereof, and recommend-

ing that said bonds and patents be issued to said Railroad Company on account of the work from said 1,000th mile-post to the "common terminus of the Union Pacific and the Central Pacific railroads" "at or near Ogden," and that the bonds and patents on account of said work from said common terminus to Promontory Summit be issued to such Company as the proper authority, after full investigation of the respective claims of the Union Pacific Railroad Company and the Central Pacific Railroad Company of California, should thereafter determine to be lawfully entitled, subject to the provision that no bonds or patents should in any event be issued until such security should be deposited with the Secretary of the Treasury of the United States, necessary to secure the ultimate completion of the road, as should be agreeable to the several acts of Congress.

17. That on the same day the President of the United States endorsed upon said report of said Secretary of the Interior the following: "Executive Mansion, July 15, 1869. The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect."

(Signed.) "U. S. GRANT."

JUNCTION WITH CENTRAL PACIFIC.

18. That said railroad and telegraph line was constructed under the authority of said acts of Congress by said Railroad Company, to a common terminus with the Central Pacific Railroad and that the Congress of the United States by an act entitled, "An Act to Fix the Point of Junction of the Union Pacific Railroad Company and the Central Pacific Railroad Company," approved May 6th, 1870, provided that the common terminus and point of junction of the Union Pacific Railroad and the Central Pacific Railroad should be definitely fixed and established on the line of railroad as now located and constructed, northwest of the station at Ogden, and within the limits of the sections of land hereinafter mentioned, viz.: Section Thirty-six of Township seven, of Range two, situate north and west of the principal meridian and base line in the Territory of Utah, and sections twenty-five, twenty-six and thirty-five of Township seven, of Range two, and section six of Town-

ship six and sections thirty and thirty-one of Township seven, of Range one, and sections one and two of Townships six, of Range two, all situate north and west of said principal meridian and base line.

19. That the common point of terminus between the Union Pacific Railroad Company's line of railroad and the line of the Central Pacific Railroad Company, became and was fixed at a point about five miles northwest of Ogden, in the Territory (now State) of Utah, and distant from the point at which the construction of the line of said railroad was commenced in section 10, Township 15, Range 13, in Nebraska, 1,038.43 miles along the present line of said railroad.

20. That said railroad and telegraph line was constructed and completed according to the requirements of said several acts of Congress, from said point of commencement thereof to said point of common terminus with the Central Pacific railroad, in the year 1869.

POINT OF COMMENCEMENT.

21. That at the time when the construction of said railroad was commenced, the boundary line between the State of Iowa and the Territory of Nebraska was the channel of the Missouri River, and that the point where the construction of said railroad line was commenced was at or near the westerly bank of said river, and that in order to reach therefrom a point on the westerly boundary of the State of Iowa, it would have been necessary to have constructed a railroad bridge across the Missouri River; and that said railroad company did not at any time construct its railroad from the point where the same was so as aforesaid commenced in said section 10, township 15, range 13, to the point designated by the President of the United States on March 7, 1864, as a point on the western boundary of the State of Iowa east of and opposite to the east line of Section 10, Township 15, Range 15, east of the sixth principal meridian, in the Territory of Nebraska.

22. That from the point where the construction of said railroad was as aforesaid originally commenced the line of railroad as then constructed followed the westerly bank of the Missouri River southerly for a distance of about three miles, running thence westerly and away from the bank at said river.

COUNCIL BLUFFS TERMINALS—CROSSING OF RIVER.

23. That on the 7th day of March, 1864, and continuously thereafter the western boundary of the State of Iowa east of and opposite to the east line of said Section 10 in the Territory of Nebraska, above referred to, was embraced within and was a part of the City of Council Bluffs in said State of Iowa.

24. That said railroad company acquired lands for its terminals and bridge approaches in Council Bluffs in about the year 1866 which terminal grounds are the same as those upon which the present terminal station of said railroad is situated, and that thereafter and during the period of the construction of said railroad, and until a permanent bridge was constructed across the Missouri River as hereinafter stated, said railroad company received and delivered freight and passengers to and from its line of railroad at its station in Council Bluffs in the State of Iowa, by means of railway tracks from said station to the easterly bank of the Missouri River, and thence across said Missouri River to connections with its track constructed as aforesaid on the westerly bank of said river; at various points from the point of the commencement of construction hereinbefore referred to, to a point about two and one-half miles southerly from said point, and that the transfer across the Missouri River was effected by means of ferryboats during the season when such boats could be operated and used, and by means of tracks resting upon temporary piling during the winter season of each year.

25. That said tracks and said means of transfer across the Missouri River were temporary in character, and were frequently changed to meet the varying requirements resulting from so crossing said river upon or near its surface.

CONSTRUCTION OF BRIDGE.

26. That prior to and during the period of the construction of said railroad, various surveys were made by said Railroad Company, for the purpose of ascertaining and determining upon a suitable location for a permanent railroad bridge across the Missouri river, and that said Railroad Company finally determined to build a permanent railroad bridge across said river between Omaha and Council Bluffs at the place where the present bridge is located, and

commenced work thereon or in preparation therefor in the latter part of the year 1868, and during the year 1869.

That after the year 1869 nothing was done upon the work of constructing said bridge until the year 1871.

27. That meanwhile there was enacted by the Congress of the United States an act entitled "An Act to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa," which act was approved February 24, 1871, and provided among other things "that for the more perfect connection of any railroads that are or shall be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska, The Union Pacific Railroad Company be and it is hereby authorized to issue such bonds, and to secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge over said river, and the tracks and depots required to perfect the same as now authorized by law of Congress," and further "that nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific Railroad from the place where it is now fixed under existing laws, nor to release said Railroad Company, or its successors, from its obligations as established by existing laws," and that the amount of bonds authorized by said act to be issued for the purposes as therein stated, was fixed at not to exceed two and one-half millions of dollars.

28. That thereupon said Railroad Company made and issued its mortgage and bonds under the authority of said act, as is hereinafter more specifically found, and with the moneys derived from the sale of said bonds built and completed a permanent railroad bridge across the Missouri River between Omaha, Nebraska, and Council Bluffs, Iowa, with the approaches and appurtenances thereto, during the years 1871 and 1872, and that the same was completed in the year 1872.

29. That such bridge and approaches consisted of grades and railroad tracks extending from the east line of the Railroad Company's Property between Twelfth and Thirteenth avenues in Council Bluffs, Iowa, in a westerly direction to the east bank of the Missouri River to a connection with the bridge; of a permanent railroad bridge

across the river to the westerly bank thereof; and of grade and railroad tracks connecting therefrom westerly through Omaha to a connection with the tracks of said Railroad Company originally constructed by it at a point at about Twentieth street in said city of Omaha, a distance of three and ninety-eight hundredths (3.98) miles. That the same was not certified to the United States under the provisions of the said Acts of July 1, 1862, and July 2, 1864, and that no subsidy bonds or patents of lands were delivered by the United States to said railroad company at the time of or after the construction thereof or based specifically thereon.

30. That thereafter said bridge and its approaches were used and operated by said Railroad Company as a part of the main line of said railroad property and are included in what has since been known and described as the Bridge Division of said property.

31. That said Railroad Company maintained and operated its said railway properties from the times of the construction and completion of the several parts of the same, until said Company became by consolidation a part of The Union Pacific Railway Company in 1880.

FORMATION OF UNION PACIFIC RAILWAY COMPANY.

32. That defendant The Union Pacific Railway Company is a corporation created by and existing under and by virtue of said acts of the Congress of the United States of July 1, 1862, and of July 2, 1864, and the acts of the Congress of the United States amendatory thereof and supplemental thereto.

33. That said The Union Pacific Railroad Company was so formed and created by the consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, on or about January 24, 1880, and that said The Union Pacific Railway Company, so created by the consolidation of said several railway companies, thereupon became the successor to each and all of said constituent companies, and thereby and by conveyances from said constitutent companies became vested with all the rights, titles, interests, properties and franchises of each and all of said constituent companies, and that said The Union Pacific Railway Company then and there became the owner of the

railroad property and franchises of The Union Pacific Railroad Company, including the property and franchise embraced in and covered by the mortgage of The Union Pacific Railroad Company dated November 1, 1865, hereafter described, as well as the lines of railway and property which it derived through said consolidation from said several other constituent companies.

34. That the lines of railway which became through said consolidation the property of said The Union Pacific Railway Company as aforesaid, are in general terms described and are commonly known and will be hereinafter designated as follows: A line from Council Bluffs, Iowa, to Bridge Junction in the city of Omaha, including the bridge across the Missouri River, known and designated as the Omaha Bridge Division; a line of railway from Omaha, Nebraska, to a point five miles west of Ogden, Utah, known and designated as the Union Division; a line of railway from Kansas City, Missouri, and Wyandotte, Kansas, to Denver, Colorado, known and designated as the Kansas Division; a line of railway from Leavenworth, Kansas, to Lawrence Junction, Kansas, known and designated as the Leavenworth branch of the Kansas Division; a line of railway from Denver, Colorado, to Cheyenne, Wyoming, known and designated as the Denver Pacific Division.

35. That thereafter said Union Pacific Railway Company maintained and operated its railroad properties, including the several portions thereof which had been the property of The Union Pacific Railroad Company prior to such consolidation with such additions and extensions as were from time to time made thereto, until said property of said The Union Pacific Railway Company passed into the possession of Receivers thereof as hereinafter stated.

AMES RECEIVERSHIP.

36. That heretofore and on the 9th day of October, 1893, Oliver Ames, Second, and Samuel Carr, as executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edwin F. Atkins, commenced a suit against the Union Pacific Railway Company and others (hereinafter called the Ames Suit), in the Circuit Court of the United States for the Eighth Judicial Circuit and District of Nebraska, and filed their bill of complaint therein

a copy which bill of complaint is recited in the bill of complaint in this cause, and that such proceedings were had in said suit that on the 13th day of October, 1893, S. H. H. Clark, Oliver W. Mink, and E. Ellery Anderson were, by said Court appointed Receivers of all the properties of said Railway Company, and that on the 13th day of November, 1893, upon the petition of the Attorney-General of the United States intervening in said suit, John W. Doane and Frederic R. Coudert were appointed as additional Receivers of said property in said cause.

37. That like suits were commenced, like bills of complaint filed and like proceedings had, including the appointment of said persons as Receivers of the property of said Company, on the 13th day of October, 1893, in the several Circuit Courts of the United States for the Southern District of New York, the District of Kansas, and the District of Colorado, and on the 15th day of October, 1893, for the District of Massachusetts, and on the 16th day of October, 1893, for the Western District of Missouri, for the Southern District of Iowa, for the District of Wyoming, for the District of Washington, and on the 17th day of October, 1893, for the District of Montana and for the District of Oregon, and on the 18th day of October, 1893, for the District of Idaho, and on the 3d day of November, 1893, in the District Court for the Third Judicial District of Utah Territory, and the said additional Receivers were likewise thereafter appointed in said several suits.

38. That thereupon and thereafter said Receivers appointed in said Ames suits took possession of and operated, controlled and managed the property of said The Union Pacific Railway Company, and so operated the portion thereof which had been derived by said Company from said The Union Pacific Railroad Company through said consolidation, under the direction of the Court from time to time given in respect thereto, until about the 21st day of January, 1895.

EARNINGS OF BRIDGE DIVISION.

39. That during the period of said operation of said property by said Receivers in said cause, and on the 1st day of August, 1894, said Receivers were directed by an order of court, entered in said cause, to fix the tolls upon

business transported over said Bridge Division of said Railway property at the rate directed by the Trustees of the Omaha Bridge Mortgage hereinafter described, and from time to time as required alter the same in conformity with the instructions which might be given by said Trustees, and to keep separate accounts of all revenues derived from such tolls to be levied upon the property and passengers transported over or which should use or have the benefits of said Omaha Bridge Division, as directed by said mortgage and, after having paid therefrom the amounts required for the service of said property and for its proper operation and maintenance, to set apart the said tolls and the amount received in each calendar month, and that said tolls, or so much thereof as should remain after complying with the requirements above stated, should within fourteen days after the end of each calendar month, or as soon thereafter as the same could by proper accounting be ascertained, be paid to Drexel, Morgan & Company to the credit of the Trustees of said mortgage, to be kept and applied in paying interest upon bonds secured by said mortgage, creating a sinking fund, and purchasing or redeeming such bonds, as provided by the terms of said mortgage.

40. That thereupon and thereafter said Receivers, as Receivers in the said Ames cause, or as Receivers in the cause in which Dexter and Ames are complainants, as hereinafter stated, have continuously operated said Omaha Bridge Division of said property and kept their accounts of such operation and deposited and disposed of the revenue derived therefrom, all as required by said order of Court.

DEXTER RECEIVERSHIP.

41. That on the 21st day of January, 1895, an order was entered in the cause in which F. Gordon Dexter and Oliver Ames, Second, are complainants (hereinafter called the Dexter cause ) in the District of Nebraska and thereafter in the several districts in which said cause is pending, appointing the same persons who were Receivers of said property in said Ames cause Receivers in said Dexter cause of the property of said Railway Company affected thereby, since which time said Receivers in said Dexter cause have continuously operated and are now operating said property in conjunction with the several other portion of railway and

railway properties of said The Union Pacific Railway Company, of which other portions of such property they are Receivers in other causes pending in this or other Courts against said The Union Pacific Railway Company.

FIRST MORTGAGE BONDS.

42. That said The Union Pacific Railroad Company, pursuant to, and under the authority of, and in compliance with ,the powers conferred upon it by said several Acts of Congress, and pursuant to due corporate action taken in that behalf by said Railroad Company, and for the purpose of providing means to construct and complete its said railroad and telegraph line, did duly make, execute and issue, under its corporate seal, and did deliver to various persons, firms and corporations, for value, and for considerations and purposes and in the manner provided by its first mortgage hereinafter mentioned, its first mortgage bonds, to the number of 27,229, in the aggregate amount of twenty-seven million two hundred twenty-nine thousand (27,229,000) dollars, all of which bonds were, as so issued and delivered, duly certified by the trustees named in said mortgage, as therein provided, and that all of said bonds in said number and amount as above stated, are now outstanding and unpaid. That said bonds are in the form and contain the provisions as stated in the bill of complaint in said Dexter cause.

43. That in each of said bonds the Union Pacific Railroad Company promised to pay the sum of one thousand (1,000) dollars to the holder thereof at its office in the City of New York, thirty years after the date thereof, and also interest thereon at the rate of six per cent. per annum, payable semi-annually from the date thereof in lawful money of the United States, until the principal sum should be paid on presentation of the interest coupons annexed thereto, at the office of said Company in the City of New York.

44. That said bonds were issued in the instalments and bearing the dates and maturing at the dates, respectively, as follows:

> Said bonds, to the amount of $6,475,000, were issued, bearing date the first day of January, 1866, and maturing ,by the terms thereof, on the first day of January, 1896.

Said bonds, to the amount of $1,598,000, were issued, bearing date the first day of January, 1867, and maturing, by the terms thereof, on the first day of January, 1897.

Said bonds, to the amount of $1,920,000, were issued, bearing date the first day of July, 1867, and maturing, by the terms thereof, on the first day of July, 1897.

Said bonds, to the amount of $5,999,000, were issued, bearing date the first day of January, 1868, and maturing, by the terms thereof, on the first day of January, 1898.

Said bonds, to the amount of $8,837,000, were issued, bearing date the first day of July, 1868, and maturing, by the terms thereof, on the first day of July, 1898.

Said bonds, to the amount of $2,400,000, were issued, bearing date the first day of January, 1869, and maturing, by the terms thereof, on the first day of January, 1899.

FIRST MORTGAGE.

45. That pursuant to, and under authority of, and in accordance with the powers conferred upon said railroad company by said acts of Congress, and pursuant to due corporate action taken in that behalf by said company, and for the purpose of securing the payment of bonds aforesaid issued, and to be issued, with the interest due and to grow due thereon, and for other lawful considerations, said Union Pacific Railroad Company, did duly make and execute, under its corporate seal, and did deliver to Edwin D. Morgan, of the City of New York, and Oakes Ames, of Easton, Massachusetts, as trustees, a mortgage or deed of trust dated the first day of November, 1865, (hereinafter called Union Pacific First Mortgage), in the form and containing the provisions as set forth in the bill of complaint herein, wherein and whereby said The Union Pacific Railroad Company did bargain, sell, assign, transfer and set over, enfeoff, convey and confirm, unto the said Edwin D. Morgan and Oakes Ames, as trustees, and in trust for the purposes aforesaid, and to the survivor of them, and to their successor or

successors, all and singular the railroad, telegraph property and franchises in said mortgage described as follows:

46. "All and singular the railroad and telegraph of the said party of the first part [the said Union Pacific Railroad Company], heretofore constructed or hereafter to be constructed, from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms and provisions of said Acts of Congress, to-wit, at the City of Omaha, in the territory of Nebraska; thence, as provided in said acts of Congress, through the territories of the United States to the western boundry of the late territory of Nevada, together with all its lands, tenements, hereditaments, rights of way and easements, acquired or appropriated, or which shall be hereafter acquired or appropriated, for the purpose of a right of way for a single, double or other track, railroad and telegraph lines, and for depots, engine-houses, car-houses, station-houses, warehouses, machine shops, superstructures, erections and fixtures, being necessary for the use of said railroad or telegraph; and also all and singular the franchises now owned, possessed or acquired, or which shall be hereafter owned, possessed or acquired, by the said party of the first part, for the purpose of building and operating said railroad and telegraph above specified and described; and also all the rails, depots, yards, engine-houses, car-houses, station-houses, ware-houses, machine shops, work-shops and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired, by said party of the first part, necessary to said railroad and telegraph line, or the running and operating the same."

GOLD CLAUSE.

47. That subsequently and on or about the 12th day of March, 1868, the said Union Pacific Railroad Company as thereto authorized by law and in pursuance of due corporate action, made and entered into an agreement or indenture supplemental to said mortgage of November 1st, 1865, with said Edwin D. Morgan and Oakes Ames, Trustees, dated the said 12th day of March, 1868, wherein and whereby the said The Union Pacific Railroad Company, for the consideration therein expressed, agreed with the said

Edwin D. Morgan and Oakes Ames, Trustees, for the benefit of all who then were or should thereafter be holders of said First Mortgage Bonds, and to and with the successors of said Trustees in the trust created by said indenture of mortgage of November 1st, 1865, that the principal of all of said First Mortgage Bonds, being one thousand dollars each, as well such as had then been issued as such as should thereafter be issued, should and would be paid by the said Railroad Company, whensoever they should respectively become payable according to the tenor thereof, in gold coin of the United States at par; that is to say, one thousand dollars of such coin for each of said bonds, and thereafter The Union Pacific Railroad Company or its successor company, The Union Pacific Railway Company, caused to be stamped upon such of said First Mortgage Bonds, issued and secured by the said mortgage of November 1st, 1865, as were presented for that purpose, a provision to the effect that the same should be payable in United States Gold Coin.

TRUSTEES.

48. That said Edwin D. Morgan and Oakes Ames duly accepted said mortgage of November 1st, 1865, and the trust thereunder, and continued to be and act as the trustees thereof until their deaths respectively. That on May 8th, 1873, the said Oakes Ames died, and on December 3rd, 1873, Oliver Ames was duly appointed trustee in the place and stead of the said Oakes Ames; and the said Oliver Ames afterwards, to-wit, on March 9th, 1877, died, and on June 1st, 1881, Frederick L. Ames was duly appointed trustee in the place and stead of the said Oliver Ames. That on February 14th, 1883, Edwin D. Morgan died, and on March 6th, 1883, said F. Gordon Dexter was duly appointed successor trustee in the place and stead of said Edwin D. Morgan. That on September 13th, 1893, Frederick L. Ames died, and on October 12th, 1893, said Oliver Ames, 2nd was duly appointed trustee under said mortgage in the place and stead of Frederick L. Ames. That each of the said trustees, original and successor, duly accepted the said mortgage and the trusts thereunder, and said F. Gordon Dexter and Oliver Ames, 2nd, now are the trustees under said mortgage, and the said agreement of March 12th, 1868, supplemental thereto.

RECORDING OF FIRST MORTGAGE.

49. That said first mortgage of the Union Pacific Railroad Company of November 1, 1865, was duly recorded in all the several recording offices, or places of registration where the same was required by law to be recorded prior to 1870, except that said mortgage was not recorded within the County of Pottawattamie in the State of Iowa.

INTEREST PAYMENTS AND DEFAULTS.

50. That default was made in the payment of the interest due upon all of the said first mortgage bonds on the first day of July, 1894, the aggregate amount of such default being the sum of eight hundred and sixteen thousand eight hundred and seventy dollars ($816,870). That no part of said interest was paid until November 27, 1894, and that no interest has been paid upon such defaulted interest for the period of such default.

That the interest due upon said bonds January 1, 1895, was not paid until January 20, 1896. That the interest due upon said bonds July 1, 1895, was not paid until May 8, 1896. That the interest due upon said bonds January 1, 1896, was not paid until September 25, 1896. That the interest due upon said bonds, July 1, 1896, was not paid until November 19, 1896. That the interest due upon said bonds, January 1, 1897, was not paid until March 2, 1897. That the interest upon said bonds which matured January 1, 1894, and July 1, 1894, was paid by the Receivers in said Ames cause under authority of orders of Court made in said cause. That the interest due Januray 1, 1895, July 1, 1895, January 1, 1896, July 1, 1896, and January 1, 1897, was paid by the Receivers in said Dexter cause under authority of orders of Court made therein.

That at the several times when said interest payments were made as aforesaid by said Receivers in said several causes, said Receivers duly advertised the time when such payment would be by them made; being the several dates at which payments were made by them as hereinbefore recited.

That in and by said orders of Court providing for the payment of said interest by said Receivers in said causes, they were directed by the Court to pay interest upon the matured interest so paid by them after the maturity thereof for the period from the date of such maturity until such

payment was made by them, at the rate of six per cent. per annum, except that as to the payment of interest which matured on July 1, 1894, no such provision for interest upon such defaulted interest was made.

COUPONS NOT PRESENTED FOR PAYMENT.

51. That certain of the interest and interest coupons upon such bonds remain unpaid, payment thereof not having been demanded, and such coupons having never been presented for payment, which unpaid coupons and interest are of the dates of maturity and in numbers and amounts as follows:

| Due Date | Number of Coupons | Amount |
|---|---|---|
| From July 1, 1869, to July 1, 1887:— | | |
| July 1, 1869 | 20 | $ 600 |
| January 1, 1870 | 20 | 600 |
| July 1, 1870 | 20 | 600 |
| January 1, 1871 | 20 | 600 |
| July 1, 1871 | 20 | 600 |
| January 1, 1872 | 20 | 600 |
| July 1, 1872 | 20 | 600 |
| January 1, 1873 | 20 | 600 |
| July 1, 1873 | 20 | 600 |
| January 1, 1874 | 20 | 600 |
| July 1, 1874 | 20 | 600 |
| January 1, 1875 | 20 | 600 |
| July 1, 1875 | 20 | 600 |
| January 1, 1876 | 20 | 600 |
| July 1, 1876 | 20 | 600 |
| January 1, 1877 | 20 | 600 |
| July 1, 1877 | 20 | 600 |
| January 1, 1878 | 20 | 600 |
| July 1, 1878 | 29 | 870 |
| January 1, 1879 | 23 | 690 |
| July 1, 1879 | 26 | 780 |
| January 1, 1880 | 23 | 690 |
| July 1, 1880 | 22 | 660 |
| January 1, 1881 | 20 | 600 |
| July 1, 1881 | 20 | 600 |
| January 1, 1882 | 20 | 600 |
| July 1, 1882 | 23 | 690 |
| January 1, 1883 | 26 | 780 |
| July 1, 1883 | 23 | 690 |

| Due Date | Number of Coupons | Amount | |
|---|---|---|---|
| January 1, 1884 ..... | 21 ..... | 630 | |
| July 1, 1883..... | 23 ..... | 690 | |
| January 1, 1884 ..... | 21 ..... | 630 | |
| July 1, 1884..... | 23 ..... | 690 | |
| January 1, 1885 ..... | 21 ..... | 630 | |
| July 1, 1885..... | 28 ..... | 840 | |
| January 1, 1886 ..... | 22 ..... | 660 | |
| July 1, 1886..... | 21 ..... | 630 | |
| January 1, 1887 ..... | 21 ..... | 630 | |
| July 1, 1887..... | 24 ..... | 720 | |
| | | | $ 23,880 |
| From January 1, 1888 to July 1, 1893:— | | | |
| January 1, 1888 ..... | 21 ..... | $ 630 | |
| July 1, 1888..... | 23 ..... | 690 | |
| January 1, 1889 ..... | 23 ..... | 690 | |
| July 1, 1889..... .. | 23 ..... | 690 | |
| January 1, 1890 ..... | 21 ..... | 630 | |
| July 1, 1890..... | 21 ..... | 630 | |
| January 1, 1891 ..... | 22 ..... | 660 | |
| July 1, 1891..... | 22 ..... | 660 | |
| January 1, 1892 ..... | 21 ..... | 630 | |
| July 1, 1892..... | 27 ..... | 810 | |
| January 1, 1893 ..... | 32 ..... | 960 | |
| July 1, 1893..... | 35 ..... | 1050 | |
| | | | $ 8,730 |
| January 1, 1894 ..... | 51 ..... | $1530 | |
| July 1, 1894..... | 129 ..... | 3870 | |
| January 1, 1895 ..... | 186 ..... | 5580 | |
| July 1, 1895..... | 268 ..... | 8040 | |
| January 1, 1896 ..... | 314 ..... | 9420 | |
| July 1, 1896, Coupons and interest on bonds..... | | 12930 | |
| January 1, 1897, Coupons and interest on bonds ..... | | 28950 | |
| | | | $70,320 |
| Total ..... | | | $102,930 |

52. That heretofore there was set apart by the Union Pacific Railway Company, in the hands of James G. Harris, treasurer of that company, as trustee, which action was ratified and confirmed by an order of Court entered in

the said Ames cause, dated December 4, 1893, Vol. 1, page 314, a fund of money belonging to said railway company for the purpose of paying the interest coupons upon said bonds which remained outstanding and unpaid, maturing from January 1, 1888, to July 1, 1893, inclusive, of which sum there remains unused the sum of $8,670, and that the coupons maturing during said period, the payment of which is so provided for and which so still remain unpaid, amount to the sum of $8,730.

BONDS ISSUED AND OUTSTANDING.

53. That, complying with the requirements of the first subdivision of the order of reference in said Dexter cause, I find that there are issued, outstanding and secured by said mortgage of said railroad company of November 1, 1865, twenty-seven thousand two hundred twenty-nine (27,229) bonds, each in the principal amount of one thousand dollars ($1,000), and amounting in the aggregate to the principal sum of twenty-seven million two hundred twenty-nine thousand dollars ($27,229,000).

That of said bonds six thousand four hundred seventy-five (6,475), in the principal amount of six million four hundred seventy-five thousand dollars ($6,475,000), became due and payable on the first day of January, 1896, and payment thereof was duly demanded.

That of said bonds one thousand five hundred ninety-eight (1,598) in the principal amount of one million five hundred ninety-eight thousand dollars ($1,598,000), became due and payable on the first day of January, 1897, and payment thereof was duly demanded.

That of said bonds one thousand nine hundred twenty (1,920), in the principal amount of one million nine hundred twenty thousand dollars ($1,920,000), will become due and payable on the first day of July, 1897.

That of said bonds five thousand nine hundred ninety-nine (5,999), in the principal amount of five million nine hundred ninety-nine thousand ($5,999,000) dollars, will become due and payable on the 1st day of January, 1898.

That of said bonds eight thousand eight hundred thirty-seven (8,837), in the principal amount of eight million eight hundred thirty-seven thousand (8,837,000) dollars, will become due and payable on the 1st day of July, 1898.

That of said bonds two thousand four hundred (2,400), in the principal amount of two million four hundred thou-

sand ($2,400,000), dollars will become due and payable on the 1st day of January, 1899.

PRINCIPAL AND INTEREST PAST DUE.

54. That, computing interest upon the principal amount of said overdue bonds, from January 1, 1897, to which date the interest thereon was heretofore ordered paid by the Court herein, as aforesaid, to May 1, 1897, and computing interest upon the several amounts of interest which matured on July 1, 1894, and semi-annually thereafter, and which remain unpaid, from the several dates when such interest matured to the date when payment was made upon such interest instalment, there is found to be due, of the principal and interest of said first mortgage indebtedness, on the 1st day of May, 1897:

| | |
|---|---|
| Principal of bonds due January 1, 1896 ..... | $6,475 000.00 |
| Interest on said principal sum, from January 1, 1897, to May 1, 1897 at six per cent. per annum..... | 129,500.00 |
| Principal of bonds due January 1, 1897 ..... | 1,598,000.00 |
| Interest on said principal sum, from January 1, 1897, to May 1, 1897, at six per cent. per annum..... | 31,960.00 |
| Coupons outstanding and unpaid, which matured at dates from July 1, 1869, to July 1. 1887..... | 23,880.00 |
| Coupons outstanding and unpaid, which matured at dates from January 1, 1888, to July 1, 1893, inclusive ..... | 8,730.00 |
| Coupons outstanding and unpaid, which matured at dates from January 1, 1894, to January 1, 1897, inclusive ..... | 70,320.00 |
| Interest on $816,870 of interest due July 1, 1894, from said date to November 27, 1894 | 19,877.17 |
| Interest on $5,580 of interest due January 1, 1895, from said date to January 20, 1896 . | 353.40 |
| Interest on $8,040 of interest due July 1, 1895, from said date to May 8, 1896 ..... | 412.72 |
| Interest on $9,420 of interest due January 1, 1896, from said date to September 25, 1896..... | $414.48 |
| Interest on $12,930 of interest due July 1, 1896, from said date to November 19, 1896 | 297.39 |

| | |
|---|---|
| Interest on $28,950 of interest due January 1, 1897, from said date to March 2, 1897 | 289.50 |
| Total amount due and payable on May 1, 1897 | $8,359,034.66 |

Of which amount there is, as above noted, deposited by said The Union Pacific Railway Company, under authority of the Court, for the payment of coupons maturing from January 1, 1888, to July 1, 1893, the sum of $8,670.

PRINCIPAL AND INTEREST NOT YET DUE.

55. That in addit on to said amount of principal and interest found to have been due and payable on the 1st day of May, 1897, of said first mortgage bonds, there was on said date owing of principal and interest, upon the bonds secured by first mortgage, which have not become due and payable, the following amounts:

| | |
|---|---|
| Principal of bonds which fall due July 1, 1897 | $1,920,000 |
| Principal of bonds which fall due January 1, 1898 | 5,999,000 |
| Principal of bonds which fall due July 1, 1898 | 8,837,000 |
| Principal of bonds which fall due January 1, 1899 | 2,400,000 |
| Interest upon said principal amount of said bonds, from January 1, 1897, to May 1, 1897 | 383,120 |
| Total | $19,539,120 |

That there is hereby found to have been owing upon the said bonds and mortgage on the 1st day of May, 1897:

| | |
|---|---|
| Of principal and interest then due and payable | $8,359,034.66 |
| Of principal and interest owing but not then due | 19,539,120.00 |
| A total sum of | $27,898,154.66 |

SUBSIDY BONDS.

56. That under the authority of said several Acts of Congress, and pursuant to the terms thereof, there were issued and delivered by the Secretary of the Treasury of

the United States to said The Union Pacific Railroad Company, for the purposes stated in said Acts, the bonds of the United States (hereafter termed the subsidy bonds) in the total principal amount of twenty-seven million two hundred thirty-six thousand five hundred twelve dollars ($27,236,512), which bonds were each of the principal amount of one thousand dollars ($1,000), except one of said bonds, which was of the amount of five hundred twelve dollars ($512), and were payable thirty years after their respective dates, with interest at six per cent. per annum, payable semi-annually in lawful money and legal tender of the United States, and that all of said bonds so issued and delivered were of the tenor and effect prescribed in said Acts of Congress of the United States, and were so issued and delivered by the Secretary of the Treasury of the United States to said Railroad Company, as in the manner, and upon the conditions, and at about the times prescribed in said Acts.

57. That by the terms of said Acts under which said bonds were so issued and delivered, it was provided that to secure repayment to the United States, as provided in said Acts, of the amount of said bonds so issued and delivered to said railroad company, together with all interest thereon which might be paid by the United States, the issue of said bonds, and the delivery thereof to said railroad company, should *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds were so issued.

58. That by the terms of said Act of Congress of July 2, 1864, it was provided that the lien upon said railroad and railroad property which should arise on account of the issuance and delivery of said subsidy bonds by the United States to said railroad company should be subordinate to the lien of the first mortgage bonds authorized to be issued upon the railroad and telegraph lines of said The Union Pacific Railroad Company, to the extent and subject to the exceptions as specified in said Act.

59. That said subsidy bonds of the United States so issued and delivered by the Secretary of the Treasury of the United States to said The Union Pacific Railroad Company, in pursuance of said Act of Congress as aforesaid, were issued upon the dates, in the respective amounts,

matured at the respective dates, and bore interest from the respective dates, all as appears in the following tabulated statement thereof, to-wit:

## 60. STATEMENT A. UNION PACIFIC R. R. CO.

*Statement of United States Bonds, issued to Union Pacific Railroad Company, showing Dates of Issue, Maturity, Etc.*

| Maturity of Bonds | Date of Issue | To whom delivered | Commencement of Interest | Amount | Total |
|---|---|---|---|---|---|
| February 1, 1896 | Feb. 1, 1866 | | Feb. 1, 1866 | 640,000 | |
| | May 7, 1866 | | May 7, 1866 | 400,000 | |
| | June 26, 1866 | | June 26, 1866 | 640,000 | |
| | July 13, 1866 | | July 13, 1866 | 320,000 | |
| | Aug. 9, 1866 | | Aug. 9, 1866 | 560,000 | |
| | Sep. 11, 1866 | | Sep. 11, 1866 | 720,000 | |
| | Oct. 15, 1866 | | Oct. 13, 1866 | 560,000 | |
| | Nov. 8, 1866 | | Nov. 7, 1866 | 480,000 | |
| January 1, 1897 | Jan. 9, 1867 | | Jan. 8, 1867 | 560,000 | |
| | June 11, 1867 | | June 10, 1867 | 640,000 | |
| | July 6, 1867 | | July 6, 1867 | 640,000 | |
| | Aug. 29, 1867 | | Aug. 29, 1867 | 560,000 | |
| | Oct. 2, 1867 | | Oct. 2, 1867 | 560,000 | |
| | Nov. 5, 1867 | | Nov. 5, 1867 | 560,000 | |
| | Dec. 13, 1867 | | Dec. 13, 1867 | 320,000 | |
| January 1, 1898 | Jan. 28, 1868 | | Jan. 27, 1868 | 957,000 | |
| | May 18, 1868 | | May 16, 1868 | 960,000 | |
| | May 19, 1868 | | May 18, 1868 | 960,000 | |
| | June 12, 1868 | | June 12, 1868 | 960,000 | |
| | June 17, 1868 | | June 18, 1868 | 960,000 | |
| | July 23, 1868 | | July 22, 1868 | 960,000 | |
| | July 25, 1868 | | July 24, 1868 | 1,841,000 | |
| | Aug. 12, 1868 | | Aug. 11, 1868 | 640,000 | |
| | Aug. 29, 1868 | | Aug. 28, 1868 | 640,000 | |
| | Sep. 7, 1868 | | Sep. 7, 1868 | 1,280,000 | |
| | Sep. 23, 1868 | | Sep. 23, 1868 | 640,000 | |
| | Oct. 22, 1868 | | Oct. 21, 1868 | 640,000 | |
| | Nov. 20, 1868 | | Nov. 19, 1868 | 640,000 | |
| | Dec. 7, 1868 | | Dec. 7, 1868 | 1,280,000 | |
| | Dec. 15, 1868 | | Dec. 14, 1868 | 640,000 | |
| | Dec. 17, 1868 | | Dec. 16, 1868 | 640,000 | |
| | Dec. 24, 1868 | | Dec. 23, 1868 | 640,000 | |
| | Dec. 24, 1868 | | Dec. 24, 1868 | 640,000 | |
| | July 15, 1870 | | Nov. 21, 1868 | 1,512 | |
| January 1, 1899 | Jan. 29, 1869 | | Jan. 29, 1869 | 640,000 | |
| | Feb. 10, 1869 | | Feb. 10, 1869 | 1,280,000 | |
| | July 22, 1869 | | July 16, 1869 | 640,000 | |
| | Nov. 10, 1869 | | July 16, 1869 | 437,000 | |
| | July 14, 1870 | | July 16, 1869 | 160,000 | |
| Total | | | | | 27,236,512 |

61. That said subsidy bonds so issued by the United States to said railroad company were by said railroad company sold, and the proceeds of such sales were by said railroad company applied to its own use and in aid of the construction and equipment of its said railroad.

62. That under the provisions of said Acts of July1, 1862, and July 2, 1864, the United States commencing in the year 1867, continuously retained one-half of the earnings of said railroad company derived from the transportation of the mails, troops, munitions of war, supplies and public stores (hereinafter called government property) for the government of the United States, and applied the same, from time to time, upon account of the interest paid by the United States upon said subsidy bonds issued by the United States to said railroad company.

63. That commencing in the year 1873, and following the Act of Congress of March 3, 1873, the United States claimed the right to and did retain the entire earnings of said railroad company derived from the transportation of such government property for the government of the United States, and applied the same upon its said interest account, and so continued to retain and apply all of such earnings until during the year 1878.

64. That on July 1, 1878, the Act of Congress approved May 7, 1878, known as the "Thurman Act," became operative, and that thereupon and thereafter the entire earnings of said railroad company derived from the transportation of government property were retained by the United States, and the direct annual payments required to be made by said railroad company to the United States by the terms of said Act were settled. and said amounts so retained and received were applied, all in compliance with the terms of said Act.

65. That it having been determined that the said railroad company had been entitled to receive from the United States payment of one-half of its earnings derived from the transportation of government property for the entire period from the commencement of the operation of its railroad to July 1, 1878, and that while the United States had retained the whole of such earnings from March, 1873, to July 1, 1878, it had so retained one-half of such earnings for said period, improperly, the claim of the said railroad company in respect of the one-half of its said earn-

ings so improperly withheld by the United States for said period, was settled and adjusted under the provisions of said Act of May 7, 1878, by applying the same in satisfaction of the obligation of said railroad company to pay to the United States five per centum of its net earnings as provided in Section Six, of said Act of July 1, 1862, from the time of the completion of its railroad to July 1, 1878; and by applying the excess thereof in satisfaction of the amounts required to be paid by said railroad company under the provisions of said Act of May 7, 1878, in part on account of five per centum of net earnings provided to be paid by the terms of said Act of July 1, 1862, and in part upon the sinking fund requirements provided and established by said Act of May 7, 1878.

66. That the United States has, since July 1, 1878, under the authority of said Act of May 7, 1878, retained the entire earnings of said railroad company and of its successor, said Union Pacific Railway Company, derived from transportation of government property over the line of said railway company, known as the Union Division of its railway property, including said Bridge Division, until the appointment, as aforesaid, of Receivesr of said property in said Ames cause on October 13, 1893; and that since said date it has retained all of such earnings derived from transportation of such property on the said line of railway exclusive of said Bridge Division thereof.

67. That one-half of such earnings upon transportation of government property so retained since July 1, 1878, have been applied and credited by the United States on account of interest which has matured and been paid by the United States on said subsidy bonds, and that the United States has made and stated herein its account of said subsidy bonds issued, the interest which it has paid thereon, and of the amounts which it has credited thereon for the said earnings withheld by it, for the period from the inception of said account to April 1, 1897.

68. That said account as so stated is as follows:

# STATEMENT B, UNION PACIFIC R. R. CO.

*Statement showing Interest paid by the United States on Bonds Issued to the Union Pacific Railway Company, Interest repaid by the Company and Balance of Interest due the United States April 1, 1897.*

| | | Interest paid by the United States | Six months period ending | Reimbursed by Railroad Company | | Balance of interest paid by the United States not reimbursed each six months | Reimbursed in excess of interest paid by the United States each six months | Total balance of Interest paid not reimbursed |
|---|---|---|---|---|---|---|---|---|
| | | | | By ⅕ Transportation each six months ending | By 5% net earnings | | | |
| Total amount of bonds Issued $27,236,512 | July 1, 1866 | 19,917.09 | | | | 19,917.09 | | 19,917.09 |
| | Jan. 1, 1867 | 97,755.65 | | | | 97,755.65 | | 117,672.74 |
| | July 1, 1867 | 147,826.87 | Dec. 31, 1867 | 249,191.98 | | | 101,365.11 | 16,307.63 |
| | Jan. 1, 1868 | 210,562.28 | June 30, 1868 | 275,661.05 | | | 65,098.77 | 48,791.14 |
| | July 1, 1868 | 288,593.86 | Dec. 31, 1868 | 194,361.84 | | 94,232.02 | | 45,440.88 |
| | Jan. 1, 1869 | 549,109.77 | June 30, 1869 | 187,231.24 | | 361,878.53 | | 407,319.41 |
| | July 1, 1869 | 968,104.37 | Dec. 31, 1869 | 200,981.43 | | 567,122.94 | | 974,442.35 |
| | Jan. 1, 1870 | 809,859.96 | June 30, 1870 | 182,149.33 | | 627,710.63 | | 1,601,152.98 |
| | July 1, 1870 | 821,641.20 | Dec. 31, 1870 | 145,375.46 | | 676,265.74 | | 2,278,418.72 |
| | Jan. 1, 1871 | 817,095.36 | June 30, 1871 | 320,350.82 | | 496,744.54 | | 2,775,163.26 |
| | July 1, 1871 | 817,095.36 | Dec. 31, 1871 | 209,130.82 | | 607,964.54 | | 3,383,127.80 |
| | Jan. 1, 1872 | 817,095.36 | June 30, 1872 | 217,139.35 | | 599,956 01 | | 3,983,083.81 |
| | July 1, 1872 | 817,095.36 | Dec. 31, 1872 | 115,302.58 | | 701,792.78 | | 4,684,876.59 |
| | Jan. 1, 1873 | 817,095.36 | June 30, 1873 | 86,143.77 | | 730,951.59 | | 5,415,828.18 |
| | July 1, 1873 | 817,095.36 | Dec. 31, 1873 | 228,459.67 | | 588,635.69 | | 6,004,463.87 |
| | Jan. 1, 1874 | 817,095.36 | June 30, 1874 | 204,694.76 | | 612,400.60 | | 6,616,864.47 |
| | July 1, 1874 | 817,095.36 | Dec. 31, 1874 | 243,981.38 | | 573,113.98 | | 7,189,978.45 |
| | Jan. 1, 1875 | 817,095.36 | June 30, 1875 | 444,670.66 | | 372,424.70 | | 7,562,403.15 |
| | July 1, 1875 | 817,095.36 | Dec. 31, 1875 | 438,889.51 | | 378,205.85 | | 7,940,609.00 |
| | Jan. 1, 1876 | 817,095.36 | June 30, 1876 | 135,989.12 | | 681,106.24 | | 8,621,715.24 |
| | July 1, 1876 | 817,095.36 | Dec. 31, 1876 | 47,166.78 | | 769,928.61 | | 9,391,643.85 |
| | Jan. 1, 1877 | 817,095.36 | June 30, 1877 | 660,170.15 | | 156,925.21 | | 9,548,569.06 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| July 1, 1877 | 817,095.36 | Dec. 31, 1877 | 347,062.17 | | | | | |
| Jan. 1, 1878 | 817,095.36 | June 30, 1878 | 718,767.11 | | | 98,328.25 | | 10,116,930.50 |
| July 1, 1878 | 817,095.36 | Dec. 31, 1878 | 292,243.91 | | | 524,761.45 | | 10,641,661.95 |
| Jan. 1, 1879 | 817,095.36 | June 30, 1879 | 1,172,843.52 | | | | 355,746.16 | 10,285,933.79 |
| July 1, 1879 | 817,095.36 | Dec. 31, 1879 | 96,268.48 | | | 720,826.88 | | 11,006,760.67 |
| Jan. 1, 1880 | 817,095.36 | June 30, 1880 | 390,157.51 | | | 427,937.85 | | 11,433,698.52 |
| July 1, 1880 | 817,095.36 | Dec. 31, 1880 | 188,452.45 | | | 628,642.91 | | 12,062,341.43 |
| Jan. 1, 1881 | 817,095.36 | June 30, 1881 | 142,941.74 | | | 674,153.62 | | 12,736,495.05 |
| July 1, 1881 | 817,095.36 | Dec. 31, 1881 | 91,416.14 | | | 725,679.22 | | 13,462,174.27 |
| Jan. 1, 1882 | 817,095.36 | June 30, 1882 | 226,242.90 | | | 590,852.46 | | 14,053,026.73 |
| July 1, 1882 | 817,095.36 | Dec. 31, 1882 | 362,451.25 | | | 454,644.11 | | 14,507,670.84 |
| Jan. 1, 1883 | 817,095.36 | June 30, 1883 | 117,304.02 | | | 699,791.34 | | 15,207,462.18 |
| July 1, 1883 | 817,095.36 | Dec. 31, 1883 | 588,845.95 | | | 228,249.41 | | 15,435,711.59 |
| Jan. 1, 1884 | 817,095.36 | June 30, 1884 | 483,968.97 | | | 333,126.39 | | 15,768,837.98 |
| July 1, 1884 | 817,095.36 | Dec. 31, 1884 | 489,741.82 | | | 327,353.54 | | 16,096,191.52 |
| Jan. 1, 1885 | 817,095.36 | June 30, 1885 | 151,729.75 | 283,162,99 | | 382,202.62 | | 16,478,394.14 |
| July 1, 1885 | 817,095.36 | Dec. 31, 1885 | 182,820.83 | | | 634,274.53 | | 17,112,668.67 |
| Jan. 1, 1886 | 817,095.36 | June 30, 1886 | 167,228.71 | | | 649,866.65 | | 17,762,535.32 |
| July 1, 1886 | 817,095.36 | Dec. 31, 1886 | 178,203.56 | 155,246.59 | | 483,645.21 | | 18,246,180.53 |
| Jan. 1, 1887 | 817,905.36 | June 30, 1887 | 195,069.94 | | | 622,025.42 | | 18,868,205.95 |
| July 1, 1887 | 817,095.36 | Dec. 31, 1887 | 152,930.30 | | | 664,165.06 | | 19,532,371.01 |
| Jan. 1, 1888 | 817,095.36 | June 30, 1888 | 193,944.26 | | | 623,151.10 | | 20,155,522.11 |
| July 1, 1888 | 817,095.36 | Dec. 31, 1888 | 130,593.53 | | | 686,501.83 | | 20,842,023.94 |
| Jan. 1, 1889 | 817,095.36 | June 30, 1889 | 144,984.85 | | | 672,110.50 | | 21,514,134.45 |
| July 1, 1889 | 817,095.36 | Dec. 31, 1889 | 188,326.72 | | | 728,768.64 | | 22,142,903.09 |
| Jan. 1, 1890 | 817,095.36 | June 30, 1890 | 164,677.16 | | | 652,418.20 | | 22,795,321.29 |
| July 1, 1890 | 817,095.36 | Dec. 31, 1890 | 214,741.17 | | | 602,354.19 | | 23,397,675.48 |
| Jan. 1, 1891 | 817,095.36 | June 30, 1891 | 240,850.47 | | | 576,244.89 | | 23,973,920.37 |
| July 1, 1891 | 817,095.36 | Dec. 31, 1891 | 214,590.09 | | | 602,505.27 | | 24,576,425.64 |
| Jan. 1, 1892 | 817,095.36 | June 30, 1892 | 266,350.11 | | | 550,745.25 | | 25,127,170.89 |
| July 1, 1892 | 817,095.36 | Dec. 31, 1892 | 284,751.66 | | | 532,343.70 | | 25,659,514.59 |
| Jan. 1, 1893 | 817,095.36 | June 30, 1893 | 245,511.58 | | | 571,583.78 | | 26,231,098.37 |
| July 1, 1893 | 817,095.36 | Dec. 31, 1893 | 233,889.23 | | | 583,206.13 | | 26,614,304.50 |
| Jan. 1, 1894 | 817,095.36 | June 30, 1894 | 268,039.31 | | | 549,056.05 | | 27,363,360.55 |
| July 1, 1894 | 817,095.36 | Dec. 31, 1894 | 271,476.48 | | | 545,618.88 | | 27,908,979.43 |
| Jan. 1, 1895 | 817,095.36 | June 30, 1895 | 270,761.10 | | | 546,334.26 | | 28,455,313.69 |
| July 1, 1895 | 817,095.36 | Dec. 31, 1895 | 280,606.38 | | | 536,488.98 | | 28,991,802.67 |
| Jan. 1, 1896 | 817,095.36 | | | | | | | |
| Feb. 1, 1896 | 22,014.25 | June 30, 1896 | 271,421.40 | | | 567,688.21 | | 29,559,490.88 |
| July 1, 1896 | 687,495.36 | Dec. 31, 1896 | 282,319.85 | | | 405,175.51 | | 29,964,666.39 |
| Jan. 1, 1897 | 687,495.36 | 3 months ending Mar. 31, 1897 | 126,243.66 | | | 561,251.70 | | 30,525,918.09 |

69. That of said subsidy bonds so issued by the United States to said railroad company four million three hundred twenty thousand dollars ($4,320,000) of the principal amount thereof became due on the first day of February, 1896, and that said principal amount of said bonds was then paid by the United States to the holdlers thereof.

70. That of said subsidy bonds so issued by the United States to said railroad company three million eight hundred forty thousand dollars ($3,840,000) of the principal amount thereof became due on the first day of January, 1897, and that said principal amount of said bonds was then paid by the United States to the holdlers thereof.

71. That the total amount of said bond and interest account of the United States as above statedl, including the amount paid by the United States upon the principal of its said bonds which matured on February 1, 1896, and January 1, 1897, amounted on April 1, 1897, to

| | |
|---|---|
| Principal | $27,236,512 |
| Balance of Interest Account | 30,525,918 |
| | $57,762,430 |

That said bond and interest account cannot now be stated as of any date later then said April 1, 1897, and that said account as so stated is subject to be increased by interest accruing upon said subsidy bonds since April 1, 1897, and is subject to be diminished by earnings upon said line of railway for transportation of government property which are being withheld, and are subject to be applied upon said bond and interest account. That such earnings have been and are continuously made and earned, and are withheld for said account by the United States, which have not been credited in said account as above stated, and that credits for current earnings cannot be ascertained or entered in said account until long after the service has been rendered for which such credit is given.

That inasmuch as the interest upon said bonds continuously accrues, and the payments and earnings withheld subject to be credited upon said account likewise continually accrue, a final statement cannot now be made of the present balance of said account nor can such a statement be made as of the first day of April, 1897, except subject to charges and credits not included therein, but

such additional amounts subject to be so credited and the amounts subject to be added to the sinking fund hereinafter mentioned have not exceeded the accumulation of the subsidy debt.

That the indebtedness of the said The Union Pacific Railway Company, on account of said subsidy bonds, which has matured and is now due to the United States for the repayment of the amounts paid by the United States for principal of said matured subsidy bonds, and for repayment of the interest paid by the United States upon said matured subsidy bonds, calculating the interest upon said bonds down to April 30, 1897, and crediting a proportionate part of said bond and interest account as it stood on April 30, 1897 (such proportionate part to be paid calculated on the basis applicable to each of said amounts of matured bonds in the proportion which said amount bore to the total amount of said bonds outstanding), is as follows:

| | |
|---|---|
| Balance unreimbursed on bonds due February 1, 1896, on basis stated..... | $5,401,138 83 |
| On bonds which matured January 1, 1897.. | 4,928,490 35 |
| And the total amount of principal maturing on dates named, together with said unreimbursed interest thus calculated is..... | $18,489,629 18 |

SINKING FUND.

72. That by said Act of May 7, 1878, provision was made for a sinking fund for the purposes as in said Act provided, and that there has been, through payments made, and earnings upon transportation of government property withheld, paid into said sinking fund by said railroad company and said railway company, and the Receivers of said property, including interest collected upon securities held in said sinking fund and passed to the credit thereof on December 31, 1896, the sum ninteen million two hundred seventeen thousand seven hundred and thirteen and $\frac{40}{100}$ dollars ($19,217,713.40).

73. That the moneys so paid into said sinking fund have been from time to time invested in government and railroad bonds, and that there were on April 30th, 1897, in said sinking fund, in the possession of the United States

for the purposes as provided in said Act, of uninvested cash, the sum of three million nine hundred and forty-five thousand two hundred thirty-nine and $\frac{89}{100}$ dollars ($3,945,239.89), and bonds in the amounts and of the description as set forth in the following statement, which statement is made and certified by the Treasurer of the United States and a made part of the evidence in this cause.

# STATEMENT "C" UNION PACIFIC R. R. CO.

## *Statement of Bonds in Sinking Fund of Union Pacific Railroad, April 1, 1897.*

| Bonds | Not Due | Due But Unpaid | Rate of Interest | Maturity of Bond | Interest Payable | Date of last payment of Interest |
|---|---|---|---|---|---|---|
| | | | (per cent) | | (1st day of) | |
| U. S. 5% of 1904 | $915,750 | | 5 | Feb. 1, 1904. | Feb. May. Aug. Nov | Feb. 1, 1897. |
| U. S. 6% of 1898 | 523,000 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| U. S. 6% of 1899 | 41,000 | | 6 | Jan. 1, 1899. | Jan'y July | Jan. 1, 1897. |
| First Mortgage Bonds: | | | | | | |
| Union Pacific due Jan'y 1, 1896 | | $929,000 | 6 | Jan. 1, 1896. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1897 | | 350,000 | 6 | Jan. 1, 1897. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due July 1,1897 | 473,000 | | 6 | July 1, 1897. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1898 | 1,534,000 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due July 1, 1898 | 2,536,000 | | 6 | July 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1899 | 545,000 | | 6 | Jan. 1, 1899. | Jan'y July | Jan. 1, 1897. |
| Central Pacific due Jan'y 1, 1898 | 2,229,000 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Kansas Pacific due Aug. 1, 1895 | | 549,000 | 6 | Aug. 1, 1895. | Feb. Aug | Aug. 1, 1895. |
| Kansas Pacific due June 1, 1896 | | 929,000 | 6 | June 1, 1896. | June Dec | Dec. 1, 1894. |
| Sioux City and Pacific due Jan'y 1, 1898 | 716,500 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Central Branch due May 1, 1895 | | 1,025,000 | 6 | May 1, 1895. | May Nov | Nov. 1, 1893. |
| Western Pacific due July 1, 1899 | 350,000 | | 6 | July 1, 1899. | Jan'y July | Jan. 1, 1897. |
| | 9,863,250 | 3,782,000 | | | | |
| Total Bonds in Fund— | | 13,645.250 | | | | |

Uninvested cash in said Sinking Fund, April 1, 1897,$3,939,420.62.

That said sinking fund is being continually increased by additions thereto from earnings from transportation of government property upon said line of railway, withheld by the United States and applied to the purposes of said sinking fund, and that large amounts have been earned on account of such transportation, by or on behalf of said railway company, which, in the course of business, will properly be, but have not yet been credited in said account of said sinking fund, as above stated, and that credits for current earnings withheld cannot be ascertained or entered in said account until long after the service is rendered for which said credit is given.

That the exact value of said sinking fund cannot, therefore, be stated as of current date, but that the value of the securities and cash held in said sinking fund, as above described, are found to be as follows:

| | | | |
|---|---|---|---|
| U. S. 5% bonds of 1904 | $915,750 at 112½ | $1,033,052.81 and interest from Feb. 1, 1897 | $11,446.87 |
| U. S. 6% bonds of 1898 | 523,000 at 102½ | 514,113.75 and interest from Jan. 1, 1897 | 10,460.00 |
| U. S. 6% bonds of 1899 | 41,000 at 105½ | 43,101.25 and interest from Jan. 1, 1897 | 820.00 |
| FIRST MORTGAGE BONDS: | | | |
| Union Pacific due Jan. 1, 1896 | 929,000 at 100½ | 930,161.25 and interest from Jan. 1, 1897 | 18,580.00 |
| Union Pacific due Jan. 1, 1897 | 350,000 at 100½ | 350,437.50 and interest from Jan. 1, 1897 | 7,000.00 |
| Union Pacific due July 1, 1897 | 473,000 at 100½ | 473,591.25 and interest from Jan. 1, 1897 | 9,460.00 |
| Union Pacific due Jan. 1, 1898 | 1,534,000 at 100½ | 1,543,587.50 and interest from Jan. 1, 1897 | 30,680.00 |
| Union Pacific due July 1, 1898 | 2,536,000 at 100½ | 2,551,850.00 and interest from Jan. 1, 1897 | 50,720.00 |
| Union Pacific due Jan. 1, 1899 | 545,000 at 101½ | 551,131.25 and interest from Jan. 1, 1897 | 10,900.00 |
| Central Pacific due Jan. 1, 1898 | 2,229,000 at 100½ | 2,234,572.50 and interest from Jan. 1, 1897 | 44,580.00 |
| Kansas Pacific due Aug. 1, 1895 | 549,000 at 99½ | 544,882.50 and interest from Aug. 1, 1895 | 57,645.00 |
| Kansas Pacific due June 1, 1896 | 929,000 at 99½ | 922,032.50 and interest from Dec. 1, 1894 | 134,705.00 |
| Sioux City & Pacific due Jan. 1, 1898 | 716,500 at 100 | 716,500.00 and interest from Jan. 1 1897 | 14,330.00 |
| Central Branch due May 1, 1895 | 1,025,000 at 35 | 358,750.00 no interest | |
| Western Pacific due July1, 1898 | 350,000 at 100½ | 350,437.50 and interest from Jan. 1, 1897 | 7,000 00 |
| | $13,645,250 | | $408,326.87 |

| | | |
|---|---|---|
| Face amount of bonds | $13,138,801.56 | |
| Present value principal | | $13,138,801.56 |
| Present value of principal of bonds | | 3,945,239.89 |
| Uninvested cash in said sinking fund April 30th, 1897 | | 408,326.87 |
| Interest unpaid computed to April 30th, 1897 | | |
| Total value as of April 30th, 1897 | | $17,492,368.32 |

75. That said The Union Pacific Railroad Company, for the purpose of providing means to construct and complete its railroad and telegraph line, made, executed and issued under its corporate seal, under date of April 16, 1867, to Cyrus J. McCormack, of the City of New York, and John Duff, of the City of Boston, as trustees, its certain mortgage upon the several sections of land granted to said Railroad Company by said Act of Congress, with all the estate, right, title, interest, claim and demand, at law or in equity, which said Railroad Company had then, or might thereafter, acquire in and to the same, saving, excepting and reserving, however, all parts and parcels of said lands which were, or should be, included in said railroad and telegraph line of said Company, or used for the construction or operation thereof, or for the tracks, yards, depot grounds, buildings or erections thereof, to secure the bonds of said Company which it was provided by the terms of the said mortgage should be issued thereunder to an amount not exceeding ten thousand (10,000) dollars for each mile of railroad and telegraph line of said Railroad Company, said bonds to be severally for the sum of one thousand (1,000) dollars each, and payable to the bearer thereof twenty years after the date thereof, with semi-annual interest at the rate of seven per cent per annum, payable on every the first day of April and October ensuing after the date thereof, until the principal sum should be paid, according to the tenor of said coupons.

76. That there were executed and issued by said railroad company ten thousand four hundred (10,400) of said bonds so secured by said mortgage, in the aggregate amount of ten million four hundred thousand (10,400,000) dollars.

77. That of said bonds so issued there have been heretofore retired ten thousand three hundred ninety-three (10,393) thereof aggregating ten million three hundred ninety-three thousand (10,393,000) dollars, and that there now remain outstanding of said bonds so issued under said mortgage, seven bonds, aggregating seven thousand dollars and no more, and that said bonds so outstanding are long since due, and that there has been provided and deposited by said Railroad Company with the Union Trust

Company of New York, as trustee, for the purpose of paying said bonds upon presentation, a sum sufficient for such purpose, and that such sum now remains on deposit with said Union Trust Company of New York, subject to be applied in payment of said bonds upon presentation thereof.

INCOME MORTGAGE.

78. That said The Union Pacific Railroad Company made, executed and delivered, under its corporate seal, under date of September 1, 1869, to John R. Duff, Benjamin E. Bates and F. Gordon Dexter, as trustees, its indenture known and hereinafter referred to as Income Mortgage, whereby, to provide for the payment of the interest warrants at the rate of ten per cent per annum upon its income bonds in the aggregate amount of ten million (10,000,000) dollars, it pledged to said trustees the net income derived from its said railroad property, after deducting therefrom the interest upon its first mortgage bonds and upon its land-grant mortgage bonds, and covenanted to apply such income in payment of such interest warrants upon said bonds as the same matured, to the extent thereof, together with the compensation of said trustees for the performance of their said trust.

That said trust was accepted by said trustees, and that the bonds provided for in said income mortgage were issued in the aggregate amount of ten million (10,000,000) dollars.

79. That, thereafter, and by means of provisions made therefor by said Railroad Company in issuing its mortgage of date December 18, 1873, known as its Sinking-Fund Mortgage, said income bonds were retired, and that they are not now existing obligations of the said The Union Pacific Railway Company.

SINKING-FUND MORTGAGE.

80. That the Union Pacific Railroad Company, pursuant to authority of law and to due corporate action taken by it in that behalf, and for the purpose of paying its bonds issued under its said land-grant mortgage, dated April 16, 1867, and its bonds issued under said income mortgage, dated September 1, 1869, or retiring said bonds by exchanging therefor coupon bonds to be issued under

its mortgage now described, and for the purpose of raising money to meet other of its obligations, duly made and executed under its corporate seal, and delivered to the Union Trust Company of New York, as trustee, its mortgage or deed of trust dated the 18th day of December, 1873, wherein and whereby said railroad company did, for the purpose of securing the payment of its bonds issued under and secured by said mortgage, grant, bargain, sell, release, convey and confirm unto the said Union Trust Company, as trustee, and in trust for the purposes aforesaid, and to its successor, all and singular the right, title, estate and interest of said railroad company, of, in and to its railroad extending from the City of Omaha, in the State of Nebraska, to a point five miles west of Ogden, in the Territory of Utah, and its appurtenances, together with all its lands, tenements, hereditaments, rights of way and easements, acquired or owned, or which should be thereafter acquired or owned, for the purpose of a right of way for a single, double or other track railroad, and for depots, engine-houses, car-houses, station-houses, warehouse, machine-shops superstructures, erections, fixtures and appurtenances and property necessary or convenient for the use of said railroad, also all of the rails, depots, yards, engine-houses, car-houses, warehouses, roundhouses, machine-shops, work-shops and other structures and fixtures of said Railroad Company, also all goods and chattels then owned or which should thereafter be owned, or acquired by said Railroad Company, necessary or convenient to said railroad, or the running and operation of the same, or used or employed therein or in connection therewith; subject, however, to the mortgage of said Railroad Company hereinbefore described as its first mortgage, dated November 1, 1865, and also to the lien or mortgage of the United States, arising from the issuance of its subsidy bonds in aid of the construction of said railroad, and also conveyed to said trustee to secure said bonds, all and singular, the lands granted to said Railroad Company by acts of Congress, and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in or to the same or any part or parcel thereof, which said Railroad Company then had, held or owned, or was entitled to or might or should thereafter acquire, have, hold, own or be or become entitled to by force or virtue of said

acts of Congress, saving and excepting all parts or parcels of said lands which had been, previous to the execution of said mortgage, conveyed or contracted to be conveyed by said Railroad Company to purchasers thereof.

81. That said mortgage, immediately upon its execution, was duly recorded in the several offices of registry in the several states and counties in which the property described in said mortgage was situated.

82. That under the terms and provisions of said mortgage, and in accordance therewith, said Railroad Company issued its bonds secured thereby in the total amount of sixteen million (16,000,000) dollars, which bonds were duly certified by said trustee and were sold by said Railroad Company, and the proceeds derived from such sale were by it applied according to the terms and provisions of said mortgage

83. That said bonds bear interest at the rate of eight per cent per annum, payable semi-annually, and that the principal thereof fell due on the first day of September, 1893.

84. That through payments made to said trustee by said Railroad Company and its successor The Union Pacific Railway Company, and through moneys derived from sales of land embraced and covered by said mortgage, and through the operation of the sinking fund provisions therein contained, there had been paid and cancelled of said bonds so issued as aforesaid under said mortgage the amount of ten million eight hundred thirty-eight thousand (10,838,000) dollars of the principal thereof, together with the interest thereon, on August 9, 1893, upon which date said Railway Company entered into an agreement with said Union Trust Company, of New York, as trustee, providing for the extension of the time of payment of said bonds then remaining unpaid, until the first day of September, 1899.

85. That upon the execution of said extension agreement, and under its terms, such of said bonds as were presented by the holders thereof were so extended until said last named date, by an agreement stamped upon each of said bonds by said railway company or its agent authorized in that behalf so to do.

86. That there are now outstanding of said bonds, secured by said mortgage of December 18, 1873, three

thousand seven hundred thirty-eight (3,738) bonds, in the principal sum of three million seven hundred thirty-eight thousand (3 738,000) dollars, of which bonds all but eight thousand (8,000) dollars have been extended under said extension agreement dated August 9, 1893.

87. That, except as stated, all the bonds issued under said mortgage have been paid and cancelled, together with the interest thereon, and that interest upon the bonds now as aforesaid outstanding has been paid up to and including the instalment of interest which fell due on the first day of March, 1896.

88. That there is now owing upon said bonds said principal sum of $3,738,000, with interest thereon from March 1, 1896, at the rate of eight per cent per annum.

OMAHA BRIDGE MORTGAGE.

89. That the Union Pacific Railroad Company under and in pursuance of the power and authority conferred upon it by the said Acts of Congress of the United States approved July 1st, 1862, and July 2d, 1864, and the Act of Congress approved February 24th, 1871, built and constructed as a part of its said line of railroad said bridge across the Missouri River between Omaha, in the State of Nebraska, and Council Bluffs, in the State of Iowa, together with the approaches thereto and appurtenances thereof, and said Railroad Company, for the purpose of purchasing and acquiring the lands and materials necessary for the construction of the said bridge and its approaches and connecting lines, and for constructing the same, and pursuant to the authority of said Act of February 24th, 1871, and to due corporate action, issued its Bridge Bonds, each for the sum of one thousand dollars United States gold coin, or two hundred pounds British sterling money, the principal of which was payable on the first day of April, 1896, unless sooner redeemed, with interest in the meantime from the first day of April, 1871, on the principal sum at the rate of eight per centum per annum, payable by half-yearly instalments of forty dollars in United States gold coin, or eight pounds five shillings and nine pence British sterling money, each on the first of October and first day of April in each year, in United States gold coin, upon presentation of the coupons attached to the said bonds; and, for the purpose of securing the payment

of said bonds and interest, said Railroad Company, pursuant to like authority of law and corporate action, made executed and delivered to John Edgar Thompson, John Pierpont Morgan and Elisha Atkins its mortgage dated on the first day of April, 1871, wherein and whereby it granted, bargained, sold, assigned, transferred, set over, enfeoffed, conveyed and confirmed to said Trustees and to their heirs and successors, and the survivor or survivors of them, and the heirs of such survivors, all and singular the said bridge over the Missouri River between Omaha and Council Bluffs, and the approaches thereof and appurtenances belonging thereto, including all parts and portions of the said bridge then constructed or thereafter to be constructed, and the depots at Council Bluffs and Omaha aforesaid, and the lands and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the neighboring lines, including in said conveyance as well the lines and tracks then constructed or those which might thereafter be constructed, and also all estates, terms and rights of way for the said bridge approaches and appurtenances as well, then held by the Company as thereafter acquired by it, and all the rights and privileges of the Company in or to the said bridge, approaches or appurtenances, or touching and concerning or appertaining to the maintenance, use or occupation thereof.

90. That said bonds and mortgage were in the form and contained the provisions as stated in the answer of the defendants Morgan and Atkins, trustees, herein.

91. That on or about the 27th day of September, 1871, said The Union Pacific Railroad Company made, executed and delivered to said John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as trustees its supplemental mortgage, bearing said date, which mortgage was in the form and contained the provisions as stated in the answer of Morgan and Atkins, trustees, in this cause in the District of Nebraska and the Southern District of Iowa, and in which supplemental mortgage it was provided, among, other things, that all the said bonds should bear interest at the rate of two-fifths of one per cent per annum, in addition to the annual eight per cent interest provided for in the mortgage dated April 1, 1871, which said interest of two-fifths of one per cent should be paid in a gross of

ten per cent upon the nominal amount of the bond
the time when the principal of the bond became payab
under the terms or conditions of said indenture, exceptin
always that those bonds which should be drawn and r
deemed at ten per cent per annum before maturing b
the sinking fund, should not carry said interest of two-fift
of one per cent; and the trustees under said mortga
were authorized and empowered to retain and deduct a
to pay and discharge such instalment of interest out
any funds or moneys of the company coming into the
hands.

92. That said mortgage and said supplemental mor
gage were duly recorded in the office of the County R
corder of Pottawattomie County, Iowa, on the 3d da
of October, 1871, and that the said original mortgage w
duly recorded in the office of the Register of Deeds
Douglas County, Nebraska, at about said date.

93. That said bonds so issued and secured by sa
Bridge Mortgage of April 1, 1871, and said supplement
mortgage of September 27, 1871, are outstanding a
unpaid, in the face amount of three hundred ninety-tw
thousand (392,000) dollars, and that all of said bon
matured and became due on or prior to April 1, 1896, a
that under the terms of said mortgage and said suppl
mental mortgage the principal amount due on said bon
is the face amount thereof and ten per cent in additi
thereto, being the amount of four hundred thirty-o
thousand and two hundred (431,200) dollars, and that t
interest upon said bonds has been paid to the 1st da
of April, 1897, and that the interest thereon since sa
date, at the rate of eight per cent per annum on said fa
amount, remains unpaid.

That said John Edgar Thomson and Elisha Atki
have since died, and that said John Pierpont Morgan, b
survivorship, and Edwin F. Atkins, by due appointmen
are now the trustees under said Bridge Mortgage of Ap
1, 1871, and the supplemental indenture of September 2
1871.

OMAHA BRIDGE RENEWAL MORTGAGE.

94. That the Union Pacific Railway Company her
tofore and under date of October 1, 1885, made, execut
and delivered to the Central Trust Company of New Yo

as Trustee, defendant herein, its certain mortgage or deed of trust known and hereinafter referred to as the Omaha Bridge Renewal Mortgage, wherein and whereby it granted and conveyed to said trustee all and singular the bridge of said railway company with its approaches and appurtenances thereto belonging, over the Missouri River between Council Bluffs, Iowa, and Omaha, Nebraska, which mortgage was executed by said railway company under and pursuant to due corporate action by said railway company in respect thereto, and was delivered to said Central Trust Company of New York, which accepted the trust therein imposed.

95. That said mortgage was and is in the terms as follows:

## OMAHA BRIDGE RENEWAL MORTGAGE.

### The Union Pacific Railway Company.

This Indenture made this first day of October, A. D. 1885, between the Union Pacific Railway Company, hereinafter called the "Railway Company," party of the first part, and the Central Trust Company of New York, hereinafter called the "Trustee," party of the second part, Witnesseth:

*Whereas*, By an Act of Congress approved Feb. 24th, 1871, the Union Pacific Railroad Company, of which the party of the first part is the successor by consolidation, duly authorized and made, was authorized to construct a bridge and railroad line across the Missouri River between Omaha, Nebraska, and Council Bluffs, Iowa, and to issue bonds not exceeding two and one-half million dollars, as said company might deem needful for that purpose, and secure the same by mortgage on the bridge its approaches and appurtenances; and

*Whereas*, Under such authority, the Union Pacific Railroad Company heretofore issued bonds to the amount of $2,500,000; and secured the same by a mortgage on the said bridge, its approaches and appurtenances, dated the first day of April, 1871, and a supplemental mortgage, dated the twenty-seventh day of September, 1871, which mortgages have been duly recorded and are hereby referred to for greater certainty; and

*Whereas*, Under the operation of the sinking fund

provisions contained in said mortgages, the bonds secured thereby have, from year to year, commencing with the years 1871-72 down to and including the years 1884-85, been redeemed, to the amount of $879,000; and

*Whereas*, At the date of this indenture, the balance of the principal sum of said mortgage amounts to $1,621,000, and is unpaid, as well as the interest to accrue thereon; and

*Whereas*, The said railway company as such successor of the said Union Pacific Railroad Company is authorized by Act of Congress to fund and renew said debt now remaining unpaid, secured by said existing bridge mortgages, to an amount not exceeding $2,500,000, and to execute a mortgage to secure the same; and

*Whereas*, The said railway company has resolved, for the purpose aforesaid, that it will issue such number of new five per cent bonds of one thousand dollars each, not exceeding twelve hundred and fifty of such bonds, as may be necessary to fund and renew the principal due, and to become due, under the said mortgages; including sinking fund requirements, and will execute a mortgage on the said bridge, approaches, appurtenances and earnings to the party of the second part hereto, which said new bonds shall be used exclusively for the purpose of funding or renewing the principal due, or which may, from time to time, become due or payable, of the outstanding bonds secured by said existing bridge mortgages, or which is or may become due or payable from time to time under the sinking fund requirements of said mortgages, provided the aggregate issue of said bonds secured hereby shall not exceed $1,250,000, which said bonds are in the following form:

No. $1,000.

UNITED STATES OF AMERICA.

THE UNION PACIFIC RAILWAY COMPANY.

OMAHA BRIDGE RENEWAL BOND.

*For value received*, The Union Pacific Railway Company promises to pay to bearer at the office of the company in Boston, or at the agency of the company in the city of New York, on the first day of October, A. D. 1915, one thousand dollars in gold coin of the present weight and

fineness, with interest thereon at the rate of five per cent per annum, payable semi-annually on the first day of April and October in each year, in like gold coin, upon presentation and surrender of the annexed coupons therefor.

This bond is one of a series of bonds, not exceeding twelve hundred and fifty, of even date herewith, of one thousand dollars each, and numbered from one upwards, the payment of which is secured by a mortgage of even date herewith, made by said railway company to the Central Trust Company of New York, as trustee, on the bridge of said company over the Missouri River, between Omaha, Nebraska, and Council Bluffs, Iowa, and its approaches and appurtenances, as authorized by Acts of Congress of the United States; which said mortgage creates a sinking fund, out of the proceeds of which this bond may, at the option of the holder thereof, be paid as provided in said mortgage. This bond is not to become obligatory until the certificate herein is signed by the trustee.

*In witness whereof*, the said railway company has hereunto set its corporate seal, and caused this bond to be executed by its President and attested by its Secretary, this the first day of October, A. D. 1885.

THE UNION PACIFIC RAILWAY COMPANY,
By , *President*,

ATTEST:
, *Secretary*.

[FORM OF COUPON.]

$25.

The Union Pacific Railway Company will on the first day of , 1 , pay to the bearer at the company's office in Boston, or at its agency, in the City of New York, the sum of twenty-five dollars, being six month's interest on Omaha Bridge Renewal Mortgage Bond No.

HENRY MCFARLAND, *Treasurer*.

[FORM OF TRUSTEE'S CERTIFICATE.]

It is hereby certified, that this is one of the bonds of one thousand dollars each, issued under an indenture of mortgage to the undersigned as trustee.

CENTRAL TRUST COMPANY, TRUSTEE,
By , *President*.

*And whereas*, The annual payments, in order to fund and retire said existing bridge bonds, secured by said mortgages of April 1, 1871, and Sept. 27, 1871, will require the sums stated in the last column in the following table:

## THE UNION PACIFIC RAILWAY COMPANY, OMAHA BRIDGE BONDS.

### Statement of Bonds Redeemable Oct. 1. 1885, to Maturity.

| Date of Semi-annual Payments | Amount of Bonds Outstanding | Bonds Redeemable |
|---|---|---|
| October 1, 1885 | $1,621,000.00 | ..... |
| April 1, 1886 | 1,621,000.00 | $102,000.00 |
| October 1, 1886 | 1,519,000.00 | ..... |
| April 1, 1887 | 1,519,000.00 | 109,000.00 |
| October 1, 1887 | 1,410,000.00 | ..... |
| April 1, 1888 | 1,410,000.00 | 117,000.00 |
| October 1, 1888 | 1,293,000.00 | ..... |
| April 1, 1889 | 1,293,000.00 | 126,000.00 |
| October 1, 1889 | 1,167,000.00 | ..... |
| April 1, 1890 | 1,167,000.00 | 135,000.00 |
| October 1, 1890 | 1,032,000.00 | ..... |
| April 1, 1891 | 1,032,000.00 | 145,000.00 |
| October 1, 1891 | 887,000.00 | ..... |
| April 1, 1892 | 887,000.00 | 155,000.00 |
| October 1, 1892 | 732,000.00 | ..... |
| April 1, 1893 | 732,000.00 | 167,000.00 |
| October 1, 1893 | 565,000.00 | ..... |
| April 1, 1894 | 565,000.00 | 179,000.00 |
| October 1, 1894 | 386,000.00 | ..... |
| April 1, 1895 | 386,000.00 | 192,000.00 |
| October 1, 1895 | 194,000.00 | ..... |
| April 1, 1896 | 194,000.00 | 194,000.00 |
| | Total ..... | $1,621,000.00 |

*Now, this indenture witnesseth*, That the said railway company doth hereby covenant and agree with and to the said trustee, in the manner, following, that is to say:—

ARTICLE 1. That the said railway company, in consideration of the premises and in order to secure the punctual payment of the principal and interest of the said Bridge Renewal Bonds, to be issued as aforesaid, doth by there presents grant, bargain, sell, assign, transfer and convey unto the said party of the second part, trustee as aforesaid, and to its successors and assigns, as such trustee, all and singular the bridge, approaches and appurtenances thereto, over the Missouri River, between Council Bluffs, Iowa, and Omaha, Nebraska, mentioned and described in

said Act of Congress, approved Feb. 24, 1871, together with the rents, earnings, issues, tolls, incomes and profits thereof, including all parts and portions of said bridge, now constructed or hereafter to be constructed, and the depots, at Council Bluffs and Omaha aforesaid, and the railroad thereover, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same, with the lines of any railroad that are now, or shall hereafter be, constructed to the Missouri River at Council Bluffs, Iowa, or Omaha, Nebraska, a map and description representing and describing the general features of which property is hereto annexed and made a part hereof, but the same shall not be considered exclusive of other property covered hereby; and also all the estates, lines, rights of way, as well now held by the company as to be hereafter acquired by it, and all the rights and privileges of the company of, in, or to the said bridge, approaches and appurtenances, or touching, concerning or appertaining to the maintenance, use or occupation thereof; and also all and singular the franchises now owned, possessed or acquired, or which shall hereafter be owned, possessed or acquired, by said railway company in respect of said bridge, approaches and appurtenances thereto, and railroad thereover.

*To have and to hold* said premises unto the party of the second part, trustee as aforesaid, its successors and assigns forever, upon the trust, to hold the same for the use, benefit, and security of all and singular the persons and corporations who or which shall from time to time be lawful owners and holders of any of said bonds issued hereunder and for securing the payment of the principal and interest of such bonds; and for the uses and purposes, and upon and with the conditions and powers in and by these presents expressed and declared, subject only, however, to such lien thereon, or the parts or parcels thereof, as may at the date of these presents have been created by said existing mortgages, until the same shall have been surrendered, paid and satisfied in the manner hereinafter provided, and so far only as the same may be legally entitled to priority over the liens and rights created hereby. The said Railway Company covenants that these presents constitute the only lien on said property and rights, except as above declared, at the date of these presents, and that

it will not dispose of nor employ the earnings of the property hereby mortgaged in any manner inconsistent with the provisions hereof.

The said railway company covenants to and with the said trustee herein, that it will not issue, sell and negotiate bonds to be issued hereunder in any manner inconsistent with the provisions of this indenture, and that it will apply the said bonds secured hereby, or the proceeds thereof, exclusively for the purpose of funding, and renewing said existing and outstanding bridge bonds in the manner herein provided; to secure which, to the holders of the bonds to be issued hereunder, it is hereby covenanted by the said railway company with each holder of any bond secured hereby, that the said trustee herein shall certify and deliver bonds hereunder, only at the times and in the amounts following:—

| | |
|---|---|
| April 1, 1886 | $102,000 |
| April 1, 1887 | 109,000 |
| April 1, 1888 | 117,000 |
| April 1, 1889 | 126,000 |
| April 1, 1890 | 135,000 |
| April 1, 1891 | 145,000 |
| April 1, 1892 | 155,000 |
| April 1, 1893 | 167,000 |
| April 1, 1894 | 179,000 |
| April 1, 1895 | 15,000 |
| | $1,250,000 |

The said railway company hereby covenants and agrees with the said trustee and each bondholder secured hereby, to well, truly, and punctually pay the interest on, fulfill the sinking fund requirements in respect of, and fund and retire, the existing bridge bonds, and cancel and satisfy the same, as the same become due and payable; and that at the maturity of said existing bonds, it will cause said existing mortgage to be duly cancelled and discharged of record, or assigned to the trustees hereunder, or held exclusively for the benefit of the bonds issued hereunder, as the trustee may require of it; and also that it will not extend the time of payment of the principal, or any part or the interest of said existing bonds as the same

mature, but will pay and cancel the coupons and principal as the same fall due.

In no case shall any of the bonds secured hereby be certified by the said trustee, except upon delivery to it, from time to time, of a certificate from the trustee or trustees in the said existing mortgages, or the sworn statement of the president or treasurer of the railway company, that the railway company has paid to the said trustee or trustees, or to the London and San Francisco Bank (limited), London, or to the Messrs. Drexel, Morgan & Co., New York, or the successors of either of them, a specified amount of money, to be applied under said existing bridge mortgages to the funding and retiring of bonds secured thereby, whereupon the trustee in this indenture shall, from time to time, certify and deliver to the railway company bonds secured hereby, not exceeding the amount specified above, to the par amount of the said specified amount of money so paid as aforesaid to said trustee or trustees of the existing bridge mortgages, or to the said bank, or to said Drexel, Morgan & Co., or the successors of either of them, and the trustee hereof is not bound to look beyond said certificate of the trustee or trustees of the existing mortgage, or a resolution of the railway company, verified by the oath of its president or treasurer, stating that it has made payment of a specified amount of money to said last named trustee or trustees, or to said London and San Francisco Bank (limited), London, or to Messrs. Drexel, Morgan & Co., New York, or to the successors of either of them; the first certification of bonds hereunder, to the extent of one hundred and two thousand dollars, to be made by the trustee without further corporate act on the part of said railway company, or certificate, or sworn statement as required for other certifications; and thereafter bonds are to be certified by the trustee from time to time, as above specified and provided.

The said railway company hereby covenants and agrees that it will pay to the trustee herein on the first day of March, 1897, and on the same day each year thereafter, until the bonds secured hereby are paid, a sufficient sum of money to provide for a sinking fund, to be composed of a fixed sum of forty-four thousand dollars gold coin of the United States, which sinking fund is to be annually

applied by the trustee in the purchase and redemption of bonds as herein set forth.

If bonds secured hereby sufficient in amount to exhaust the cash in the hands of the trustee, cannot be bought in open market by said trustee at a price not exceeding five per cent above their par value and interest, then said trustee shall invest any and all moneys thus received, and all accumulations and income thereof, in the purchase of any of the bonds of the Union Pacific Railway Company, or in the purchase of the bonds of any railroad now constructed, or hereafter to be constructed, which connects with the road known as the Union Pacific Railroad (extending from Council Bluffs, Kansas City, and Leavenworth on the east, to Ogden and Denver on the west, and from Denver to Cheyenne), or of the first mortgage bonds of any branches or extensions thereof, or of connecting railroads, now existing or hereafter to be constructed or acquired, and of which road so connecting therewith the Union Pacific Railway Company is the owner or lessee, or owns the majority of the capital stock thereof; and if no satisfactory bonds of any of the foregoing descriptions can be purchased on terms which will yield or pay interest on the amount necessary to be invested therein at the rate of at least four per cent per annum, then the trustee in this indenture may purchase other first mortgage bonds of any other railroad companies, or state, territorial, county, precinct, township, or city bonds, which will yield or pay interest at the rate last mentioned.

ARTICLE 2. If the said railway company shall pay the bonds, principal and interest, secured hereby, at the times and in the manner aforesaid, and keep the covenants herein on its part, this indenture shall be satisfied and discharged of record.

ARTICLE 3. Until default be made by the railway company as herein provided, it shall be entitled to the possession, use and operation of the said bridge, and to receive the rents, earnings, incomes and profits thereof; provided, however, that in case default be made by said railway company in the payment of the interest or principal of the existing bridge bonds, or in respect to the sinking fund requirements of the existing bridge mortgages, or in any covenant or condition therein contained, or in the payment of interest upon the bonds secured hereby,

or in respect of the sinking fund provisions herein contained or in the payment of the principal of the bond themselves, or in any covenant or condition herein contained, and such default shall continue for three months after written demand for performance made upon the company by the trustee or any of the bondholders secured hereby, then and in either and every such case said trustee is entitled to take possession of the property hereby mortgaged, operate said bridge and fix the tolls, rates and charges thereon for the use thereof, to receive the rents, earnings, incomes, and profits thereof, and to make all necessary repairs, and to receive just and reasonable compensation for its services, and to apply the net tolls, income and revenue of said bridge to the payment of the interest in arrear, or which shall fall due on the outstanding bonds secured hereby in the order in which such interest shall have become due, ratably, and after paying all such interest which shall have become due, to apply the same to the satisfaction of the principal of the aforesaid bonds which may be at the time due and unpaid, if the principal shall have become due and payable as herein provided, ratably.

ARTICLE 4. So long as the security hereby created shall subsist, the company will insure and keep insured in the name of the said trustee for the benefit and protection of the holders of the bonds secured hereby, the depots and buildings connected with the said bridge, against loss or damage by fire; and the proceeds of such insurance shall be applied, under the direction of the trustee, in restoring the property to its condition at the time of the injury. And the railway company covenants to restore such property to its condition at the time of the injury, and to furnish all moneys necessary to said end, over and above the proceeds of such insurance. And the railway company also covenants to maintain and preserve said bridge and mortgaged property in good order and condition.

ARTICLE 5. If default shall be made as provided in article three (3) hereof, and such default shall continue for three months after demand made in writing as aforesaid, said trustee *may*, and at the request of the holders of one-fourth in amount of the bonds issued hereunder and then outstanding, and upon being sufficiently indem-

nified, *shall* declare the principal sum to be due, and thereupon the principal of all the bonds secured by this indenture shall be immediately due and payable, anything contained in the bonds, or herein, to the contrary notwithstanding; and with or without entry as it may deem best, shall cause the said bridge, and lines, and all other property, matters, and things hereinbefore expressed to be conveyed, to be sold by public auction in the City of Council Bluffs, Iowa, giving ninety days' notice of the time, place and terms of sale, once in each week in one or more papers published in the City of New York, and upon such sale shall execute to the purchaser or purchasers, deeds, releases, transfers and conveyances of the property, estates, rights and securities thus sold, and shall apply the proceeds of such sale, together with all moneys in its hands which shall be received under or by virtue of these presents, after deducting all expenses incurred in the execution of the trusts and powers hereby created, first to the payment of all interest coupons of said bonds at the time remaining due and unpaid, in the order in which the same shall have become due, ratably to the persons entitled thereto, and thereafter to the payment of the principal of said bonds equally and without preference, whether the same shall have become due or not, and shall pay over the surplus (if any) to the said railway company; or at its election proceed to foreclose this mortgage by a suit or suits in equity, or at law, or otherwise, as it, the trustee, being advised by counsel learned in the law, shall deem most effectual to ensure such rights, the proceeds of sale thereunder being applied in the manner last above provided. It being understood, and it is hereby expressly declared, that the rights of entry and sale hereinbefore granted are intended as cumulative remedies, additional to all other remedies allowed by law, and that the same shall not be deemed, in any manner whatsoever, to deprive the trustee or the beneficiaries under this trust, of any legal or equitable remedy by judicial proceedings, according to the true intent and meaning hereof.

*Provided always*, and it is hereby expressly declared and agreed, that no holder of a bond or of any bonds secured hereby, shall have the right to institute any suit, action, or proceeding, in equity or at law, for the foreclosure of this indenture, or for the execution of the trusts

hereof, or for the appointment of a receiver or any other action, suit or remedy hereunder, without first giving notice in writing to the trustee of default having occurred and continued, as in this article aforesaid, and requesting the trustee, and affording it a reasonable opportunity, to institute such action, suit or proceeding in its own name, or to proceed to exercise the powers hereinbefore granted, and also offering to it adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared to be conditions precedent to any suit or action, or right of suit or action by any holder of a bond or of any bonds secured hereby for the foreclosure, or for the execution of the trusts of this indenture, or for the appointment of a receiver, and to any other action, suit or remedy hereunder.

And it is hereby provided, declared and agreed that in case any sale shall be made of the said mortgaged estate, chattels real, interests, estates, appurtenances, fixtures, equipments, property, lands, rights, privileges, inmmuities, or franchises, either by the exercise of the powers granted in this article of this instrument, or pursuant to or under a judicial decree or judgment of a Court, the purchaser or purchasers at said sale or sales shall be entitled in making settlement for and payment of the purchase money, to deliver to the trustee, or in case of a judicial sale, to the person or persons legally appointed and qualified to receive the payment of such purchase money, and to turn in and use any of the bonds or coupons secured by these presents, in or towards the payment of said purchase money; reckoning and computing said bonds or coupons at a sum equal to, and not exceeding ,that which shall be payable out of the net proceeds of said sale, to the purchaser or purchasers, as the holder or holders of said bonds or coupons, for his or their just share and proportion in that character, of said net proceeds, upon a due accounting concerning, and apportionment and distribution of, the said net proceeds.

And the railway company further agrees, that if any default be made in the covenants, agreements and provisions herein contained, or in said existing mortgages contained, a degree for specific performance, in addition to any other right or remedy therefor, and not in exclusion

thereof, may be obtained; and pending the application thereof, and also pending any other proceedings by the trustee to enforce the rights of the trustee and the bond-holders under these presents, or to forclose this mortgage, one or more receivers of such premises, franchises and property, and of the earnings, profits and income thereof, shall in the discretion of the trustee be appointed, and such other and further or equitable relief shall be had as shall be proper and adequate in the premises.

Article 6. If any such sale shall be made as provided in Article 5, or by virtue of any judicial decree of foreclosure, the company shall thereafter in perpetuity be bound to pass all the passengers and freight of the said railway company passing across the Missouri over the said bridge and lines, and not to avail itself of or use any bridge or ferry across the Missouri, now or hereafter existing within twenty miles of a straight line above or below the said bridge hereinbefore mentioned, and will pay as a first transportation lien upon such traffic such tolls as shall from time to be lawfully charged by the purchasers of the said bridge and lines in respect of goods and passengers passing over or using the same.

Notwithstanding any such sale, the said railway company shall remain bound to pay all the bond-holders so much of the principal and interest of their bonds, if any, as shall not have been paid out of the proceeds of such sale.

Article 7. The said railway company hereby covenants and agrees to well and truly pay, in gold coin of the United States of America, of the present standard of weight and fineness, the said bonds hereby secured, when and as the same shall become due and payable; and likewise will well and truly pay all the interest which shall from time to time become due and payable upon said bonds when and as the same shall become due and payable.

Article 8. The said railway company further hereby covenants and agrees with the said trustee, and each bond-holder secured hereby, that as said existing bonds are redeemed or paid, either out of the proceeds of the bonds issued hereunder, or the other resources of said company, the trustee and the holders of the bonds issued under this indenture shall be, and they are subrogated to all the rights, liens and equities which pertained to the bonds so paid and satisfied, whether the same arise under this iden-

ture, the said existing mortgage, acts of Congress, acts of the company or otherwise, and that such bonds shall be turned over to the trustee hereunder, for the further security and protection of the holders of bonds secured hereby.

ARTICLE 9. The said railway company covenants and agrees at all times hereafter to pay all taxes and assessments, whether federal, state, county or municipal, which are, or may hereafter be assessed or imposed against the said premises hereinbefore granted, or intended so to be, and all federal, state, county, or municipal taxes or charges which may be imposed upon, or be required by law to be deducted by said company or the bondholders, either from the principal or interest of said bonds, at the time or times when the said taxes or assessments may be respectively due and payable; and does also agree to waive, and hereby irrevocably waives, all benefit or advantages of any valuation, stay, appraisement, redemption or extension laws, now existing, or which may hereafter be passed, which but for this provision, agreement and waiver might be availed of to prevent or postpone the absolute and immediate sale of said premises, under the provisions herein contained, or by judicial authority; and agrees that it will not set up or seek to take the benefit or advantage of the same.

ARTICLE 10. The said railway company further covenants and agrees that it shall and will at all times hereafter, upon the reasonable request of the trustee, make, execute, acknowledge and deliver all such further deeds, conveyances, assignments and assurances in the law for the better assuring to the trustee upon the trusts and for the purposes herein expressed or intended, the said premises and property hereby mortgaged or conveyed in trust, or intended so to be whether now owned or possessed by or vested in the said railway company, or subsequently shall be acquired by or vested in it relating thereto, including all franchises now held or that shall be hereafter acquired relating thereto.

ARTICLE 11. The trustee herein appointed may be removed by a court of competent jurisdiction upon the application of a majority in interest of the holders of the outstanding bonds secured hereby, without cause, and upon the application of a less number for cause. In case of any vacancy in said trust by reason of removal, resignation or otherwise, a successor may be appointed by the holders

of a majority in interest of all the bonds secured hereby and then outstanding, excluding for this purpose all bonds held by said railway company, directly or indirectly, by instrument or instruments in writing under their hands and seals, and thereupon such successor shall succeed to and shall possess and exercise all the rights, duties, and powers herein conferred or imposed upon the party hereto of the second part.

ARTICLE 12. The word "trustee" used herein is intended to mean the party of the second part hereto, or any successor trustee, and any successor trustee shall be possessed of and exercise all the powers and duties granted and created by these presents.

ARTICLE 13. The said party of the second part hereby accepts the trusts created by these presents and agrees to execute the same to the best of its ability. In the execution of its trusts, the trustee shall not be answerable except for willful default or gross negligence, and shall be entitled to reasonable compensation for the discharge of its duty, and to be reimbursed for all costs and expenditures reasonably incurred by it in the execution of its trusts.

*In witness whereof*, the said railway company, party of the first part, has caused this instrument to be signed by its President and its corporate seal to be hereunto attached, attested by its Secretary; and the said trustee, party of the second part, has hereunto set its seal, and caused the same to be attested and this instrument to be signed by its proper officers, the day and year first above written.

The Union Pacific Railway Company,
By C. F. ADAMS,
President.

[SEAL]

Attest: HENRY MCFARLAND,
Secretary.

The Central Trust Company of New York,
By F. P. OLCOTT,
President.

[SEAL]

Attest: C. H. P. BABCOCK,
Secretary.

STATE OF MASSACHUSETTS, }
COUNTY OF SUFFOLK. } ss.

Be it remembered, that on this second day of May, 1887, personally appeared before me, a Notary Public in and for said county and State, Charles F. Adams, to me personally known, and known to me to be the President of the Union Pacific Railway Company, and said Adams then and there acknowledged that he executed the foregoing mortgage or deed of trust for and on behalf of the said Union Pacific Railway Company, and as its voluntary act and deed, for the uses, purposes, and considerations therein stated, and that the seal attached to said instrument is the corporate seal of said railway company, and that said seal was so attached thereto, and he signed said instrument, by order of the board of directors of said railway company.

*In witness whereof*, I have hereunto set my hand and affixen my official seal the day and year first above written.

JAMES G. HARRIS,
Notary Public.

[SEAL]

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } ss.

Be it remembered, that on this twenty-fifth day of May, 1887, personally appeared before me, a Notary Public in and for said county and State, F. P. Olcott, to me personally known and known to me to be the President of the Central Trust Company, and said Olcott then and there acknowledged that he executed the foregoing mortgage or deed of trust for and on behalf of the said Central Trust Company, and as its voluntary act and deed, for the uses, purposes, and considerations therein stated, and that the seal attached to said instrument is the corporate seal of said Trust Company, and that the said seal was so attached thereto, and he signed said instrument by order of the board of directors of said trust company.

*In witness whereof*, I have hereunto set my hand and official seal, the day and year first above written.

HERBERT M. HYDE,
Notary Public.,
New York City and County.

[SEAL]

STATE OF IOWA,
POTTAWATTAMIE COUNTY. } ss.

Filed for record the 28th day of May, A. D. 1887, at 1½ o'clock p. m. and recorded in Book 199 Page 390 of county records.

W. H. THOMAS,
Recorder.

Received for record this 20th day of May, A. D. 1887, at 4.30 o'clock p. m. and recorded in Book 63 of Mortgages at page 273.

C. P. NEEDHAM,
County Clerk,
Douglas County, Neb.

S. S. AUCHMOEDY,
Deputy.

96. That said mortgage was duly recorded in the office of the recorder of Pottawattamie County, state of Iowa, and was also duly recorded in the office of the county clerk of Douglas County, State of Nebraska, on the days as certified thereon.

97. That at the date of said mortgage, namely, October 1, 1885, there were outstanding and unpaid of the bonds which had been issued under the Omaha Bridge Mortgage of April 1, 1871, the principal amount of $1,621,000.

98. That said railway company, in compliance with the provisions of said Omaha Bridge Mortgage of April 1, 1871, paid to the trustees of said mortgage from time to time, sums as required by the terms of said mortgage, for the purpose of paying and canceling bonds issued thereunder, and that such bonds were from time to time paid and canceled under the terms of said mortgage and in accordance therewith; and as such bonds were paid and canceled certificates of such payment were duly made and furnished to said Central Trust Company as trustee under said Bridge Renewal Mortgage; and that thereupon said railway company executed and said trustee certified the bonds of said railway company under the provisions of said Bridge Renewal Mortgage in the form as therein provided to the amount of the principal amount of the bonds secured by said original Omaha Bridge Mortgage of April 1, 1871, so certified as having been paid and canceled; and that thereupon such bonds so made, issued and certified under said

Bridge Renewal Mortgage were delivered to said railway company.

99. That there were so executed, certified, issued and delivered to said railway company of such renewal bonds:

| | | | |
|---|---|---|---|
| $102,000 | thereof | on account of said original Omaha Bridge Bonds paid April 1, 1886. | |
| 109,000 | do. | do. | 1887 |
| 117,000 | do. | do. | 1888 |
| 126,000 | do. | do. | 1889 |
| 135,000 | do. | do. | 1890 |
| 145,000 | do. | do. | 1891 |
| 155,000 | do. | do. | 1892 |
| 167,000 | do. | do. | 1893 |
| In all, $1,056,000 | | | |

100. That of said bonds so issued and certified under the terms and provisions of said Omaha Bridge Renewal Mortgage, $589,000 thereof, being the bonds which were delivered to said railway company as for said original bonds paid as above stated from April 1, 1886, to April 1, 1890, inclusive, were sold by said railway company from time to time, and the proceeds of said sale were paid into the general treasury of the railway company.

101. That of said bonds so issued $145,000 thereof issued as for said original bonds paid April 1, 1891, were, by said railway company, on September 4, 1891, pledged with Drexel, Morgan & Company, as trustees under the Trust Indenture of the Union Pacific Railway Company of September 4, 1891, and were then delivered by said railway company to said trustees, and still held by said trustees under said trust indenture.

102. That of said bonds the amounts of $155,000 issued on account of original bonds paid April 1, 1892, and $167,000 issued on account of original bonds paid April 1, 1893, remained undisposed of by said railway company on October 13, 1893, and that said bonds then passed to the possession of the Receivers in said Ames cause hereinbefore referred to, as the property of the said railway company, and that they have not been sold or pledged by said railway company, or its Receivers.

103. That none of said bonds issued under said Omaha Bridge Renewal Mortgage have been paid or canceled.

104. That there has been paid upon said bonds the interest thereon to and including the instalment of interest which fell due on the first day of October, 1894, except that the interest coupons which by their terms fell due on October 1, 1893, on the 322 bonds which were then in the possession of said railway company undisposed of, have been, under the direction of the court in said Ames cause, canceled unpaid.

105. That no interest has been paid on said bonds since the instalment which matured on October 1, 1894, and that no payments have been made on account of the sinking fund requirements contained in said mortgage, provided to commence on the first day of March, 1897.

106. That the amount of principal and interest owing upon said bonds on the first day of April, 1897, is as follows:

| | |
|---|---|
| Principal amount of bonds sold and disposed of by said railway company | $734,000 |
| Interest thereon from October 1, 1894, to April 1, 1897 | 91,750 |
| Total | $825,750 |

107. That said bonds issued under the said Omaha Bridge Renewal Mortgage of 1885, and now outstanding, have no lien or other security for the payment thereof except the lien of said mortgage upon the property therein described.

EQUIPMENT TRUST.

108. That the Union Pacific Railway Company made and delivered its trust indenture, dated October 1, 1887, to the American Loan and Trust Company, of Boston, as Trustee, whereby it was, among other things, agreed that to enable said The Union Pacific Railway Company to purchase cars and engines for use upon its lines of railway and to pay for the same, the cars and engines so to be purchased should be transferred to and vested in said trustees under said indenture by the several parties from whom the same should be purchased, so that said trustee and its successors and assigns should stand possessed of said cars and engines until payment of the principal and interest of the bonds

issued in respect thereto should be made by said railway company under and in accordance with the provisions and requirements of said trust indenture, permitting said railway company to use and enjoy said cars and engines until default should be made in the payment of its obligations under said trust indenture and the bonds secured thereby.

109. That under said trust indenture said railway company made and issued its certain bonds, each in the sum of one thousand dollars ($1,000 ) bearing interest at the rate of five per cent. per annum, which interest was payable semi-annually and evidenced by coupons attached to said bonds, and that such bonds were so issued in three series, namely, A, B and C.

Of which the Series A bonds, in number seven hundred sixteen, and in amount seven hundred sixteen thousand dollars ($716,000), were dated October 1, 1887, and were, under the terms of said trust agreement, secured by the equipment purchased with the proceeds thereof, and described as

10 first-class coaches,
4 suburban coaches,
6 mail, baggage and express cars,
200 stock cars,
24 emigrant sleepers,
2 combination passenger and baggage cars,
6 baggage cars,
100 furniture cars,
50 refrigerator cars,
30 passenger locomotives,
10 Wooten locomotives.

And of which Series B bonds, in number from seven hundred seventeen to two thousand eight hundred twenty (707 to 2820), both inclusive, and in amount two million one hundred four thousand dollars($2,104,000), were dated April 1, 1888, and were under the terms of said trust agreement secured by the equipment purchased with the proceeds thereof, and described as

10 emigrant sleepers,
6 baggage cars,
50 passenger refrigerator cars,
600 furniture cars,
611 coal cars.
20 chair cars,

83 stock cars,
250 refrigerator cars,
1009 box cars,
27 cabooses,
100 Blaine dump cars,
75 eight-wheel locomotives,

And of which Series C bonds, in number eight hundred ten (810) and in amount eight hundred ten thousand dollars ($810,000) were dated April 1, 1890, and were, under terms of said trust agreement secured by the equipment purchased with the proceeds thereof and described as:

24 caboose cars,
100 passenger fruit cars,
400 freight fruit cars,
23 ten-wheel locomotives,
3 eight-wheel locomotives,
19 six-wheel locomotives,
1 steam derrick car,
3 chair cars,
3 baggage cars.

110. That all of said Series A bonds issued in respect to the equipment above described as Series A equipment have been paid, with interest thereon, except the amount of seventy-two thousand dollars ($72,000), with interest upon said amount from the first day of April, 1897; that the principal of said bonds will fall due on October 1, 1897.

111. That all of said Series B bonds issued in respect to the equipment above described as Series B equipment have been paid, with the interest thereon, except the amount of two hundred ten thousand dollars ($210,000), with interest thereon from April 1, 1897; that the principal of said bonds will fall due April 1, 1898.

112. That all of said Series C bonds issued in respect to the equipment above described as Series C equipment, have been paid, with interest thereon, except the amount of two hundred twenty-five thousand dollars ($225,000), with interest thereon from April 1, 1897; that seventy-six thousand dollars ($76,000) of the principal of said bonds will fall due April 1, 1898; that seventy-five thousand dollars ($75,000) of the principal of said bonds will fall due April 1, 1899; that seventy-four thousand dollars ($74,000) of the principal of said bonds will fall due April 1, 1900.

113. That said Union Pacific Railway Company entered into an agreement with said American Loan and Trust Company, as trustee under said equipment trust identure, dated February 1, 1893, recognizing and affirming said equipment trust identure of October 1, 1887, as to the amounts of principal and interest upon the bonds secured thereby then remaining unpaid, and in respect to the epuipment then existing upon which such bonds were secured in said three several series as described in said original trust identure.

114. That certain of said equipment in said three several series has been heretofore worn out and destroyed, but that such of said equipment as remains is subject to the terms of said identure and the obligations of the Union Pacific Railway Company to said American Loan and Trust Company, as trustee as aforesaid, thereunder in respect thereto.

OMAHA BRIDGE DIVISION PROPERTY.

115. That the property which is embraced in and appertains to said Omaha Bridge Division of the Union Pacific Railway is described as follows, to-wit:

The railroad and railroad property extending from the eastern terminus of the said Union Pacific Railway on the east line of the said railway company's property, between Twelfth Avenue and Thirteenth Avenue in Council Bluffs, Iowa, in a westerly direction, to a junction with the Union Division of the Union Pacific Railway at Twentieth Street in Omaha, Nebraska, including the bridge across the Missouri River and the right of way and double-track railroad thereon, between said eastern terminus and said point of junction with said Union Division, constituting the main line of said railroad between said points, a distance of three and ninety-eight one-hundredths (3.98) miles.

116. Also the right of way and railroad track constituting a branch line of railroad extending from a point of junction with the said main line of said Omaha Bridge Division at a point about six-tenths (.6) of a mile west of what is known as the transfer depot at Council Bluffs, in a northeasterly direction, to what is known as the Broadway Depot in said City, a distance of one and seventy-two one-hundredths (1.72) miles in said city of Council Bluffs, and upon and across the streets thereof.

117. Also switches, turnouts, sidings, and spur tracks aggregating in amount about 24.5 miles of track in said Council Bluffs, and about 12¼ miles in said Omaha.

118. Also lots yards, terminal and station and other grounds acquired or appropriated for the purpose of said railroad aggregating in area about 1,027 acres of land in Council Bluffs and about 42¾ acres of land in said Omaha, including certain lands the record title to which stands in the name of certain trustees for the Union Pacific Railway Company, as hereinafter more fully stated.

119. Also all the tools, appliances, furniture, fixtures, supplies, materials, rolling stock and equipments located on the premises of said Omaha Bridge Division, or acquired or provided for use in connection therewith.

120. Also all structures upon said premises, including the Broadway Depot, the Transfer Depot, freight houses, round houses, machine shops, coal chutes, store houses and other structures and facilities constructed or acquired for or used for the purposes of or in connection with, the said railway property.

121. Also the rights of way of said railway included in said Omaha Bridge Division thereof, and of its switches, turnouts, sidings and spur tracks, together with easements over streets and alleys crossed thereby in said Council Bluffs and said Omaha.

122. Also the lines of telegraph, the telegraph material, instruments, fixtures and appliances belonging to said railway company located upon or pertaining to said Omaha Bridge Division thereof.

123. Also all furniture, fixtures, appliances, apparatus, supplies and material in the various offices of said railway company upon or remote from said line of railroad, including the principal offices of said company at Omaha, Nebraska, and Boston, Massachusetts, owned, acquired or provided for use in connection with said Omaha Bridge Division of said railway property.

124. Also the rights and property of the character as above described owned or provided for the common use of the several divisions of said railway company's property to the extent of the proportionate use and devotion thereof to the business and concerns of the said Omaha Bridge Division of said railway company's property.

125. Also the rights and interests of said Union

Pacific Railway Company in or to property of every kind and nature, whether of the character as herein described or otherwise, owned, acquired or provided for the use of said Omaha Bridge Division of its said railway property.

126. Also the corporate rights and franchises of said Union Pacific Railway Company so far as they pertain to said Omaha Bridge Division thereof.

127. Also the moneys, credits and property not herein otherwise specified, in the possession of the Receivers herein, or to which they are or may be entitled which have been or may be derived by said Receivers from or on account of the property of the Union Pacific Railway Company, pertaining to said Omaha Bridge Division thereof, or from the sale or other disposition of any of said property or from the use of the same or from the operation thereof by said Receivers, subject to the charges of said Receivers, in respect thereto.

128. That the following schedule marked "Schedule 1" is a more particular description of a portion of the property above described as included in the Omaha Bridge Division of said railway:

## SCHEDULE 1.

DESCRIPTION OF PROPERTY OF THE UNION PACIFIC RAILWAY COMPANY INCLUDING RIGHT OF WAY, STATION GROUNDS, TRACKS AND STRUCTURES.

## BRIDGE DIVISION.

MAIN LINE: Extending from Eastern Terminus on East line of Company's property, Council Bluffs, Ia., in a Westerly direction to Bridge Junction at 20th Street, Omaha, Neb. ..... 3.98 miles

BRANCH LINE: Extending from junction with Main Line at a point about 0.60 mile west of the transfer depot, Council Bluffs, in Northeasterly direction to Broadway Depot ..... 1.72 "

Total Mileage Main track ..... 5.70 "
Mileage Second main Track ..... 3.92 "

# RIGHT OF WAY AND STATION GROUNDS.

*City of Council Bluffs, Pottawattamie County, Iowa.*

| Location | Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|---|
| Grimes' Addn.... | 9 | 1 | Part | 3,894 | |
| | | 2 | " | 7,570 | |
| | | 3 | All | 8,620 | |
| | | 4 | " | 8,620 | |
| | | 5 | " | 8,620 | |
| | | 6 | Part | 10,540 | |
| | | 7 | " | 944 | 49,808 |
| Bayliss' 2d Addn . | 13 | 1 | " | 9,810 | |
| | | 2 | " | 6,468 | |
| | | 3 | " | 2,840 | |
| | | 4 | " | 1,130 | |
| | | 5 | " | 4,620 | 24,868 |
| Brown's Sub Div. | 9 | 1 | All | 3,520 | |
| | | 2 | " | 3,520 | |
| | | 3 | " | 3,520 | 10,560 |
| | 10 | 1 | " | 5,478 | |
| | | 2 | " | 5,478 | |
| | | 3 | " | 5,478 | 16,434 |
| | 11 | 1 | " | 6,028 | |
| | | 2 | " | 6,028 | |
| | | 3 | " | 6,028 | 18,084 |
| | 16 | 1 | " | 6,028 | |
| | | 2 | " | 6,028 | |
| | | 3 | " | 6,028 | |
| | | 4 | " | 6,028 | |
| | | 5 | " | 6,028 | |
| | | 6 | " | 6,028 | |
| | | 7 | " | 6,028 | |
| | | 8 | " | 6,028 | |
| | | 9 | " | 6,028 | |
| | | 10 | " | 6,028 | |
| | | 11 | " | 6,028 | |
| | | 12 | " | 6,028 | |
| | | 13 | " | 6,028 | |
| | | 14 | " | 6,028 | |
| | | 15 | " | 6,028 | |
| | 17 | 1 | " | 5,478 | |

| Location | Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|---|
| | | 2 | All | 5,478 | |
| | | 3 | " | 5,478 | |
| | | 4 | " | 5,478 | |
| | | 5 | " | 5,478 | |
| | | 6 | " | 5,478 | |
| | | 7 | " | 5,478 | |
| | | 8 | " | 5,478 | |
| | | 9 | " | 5,478 | |
| | | 10 | " | 5,478 | |
| | | 11 | " | 5,478 | |
| | | 12 | " | 5,478 | |
| | | 13 | " | 5,478 | |
| | | 14 | " | 5,478 | |
| | | 15 | " | 5,478 | 82,170 |
| | 18 | 1 | " | 3,520 | |
| | | 2 | " | 3,520 | |
| | | 3 | " | 3,520 | |
| | | 4 | " | 3,520 | |
| | | 5 | " | 3,520 | |
| | | 6 | " | 3,520 | |
| | | 7 | " | 3,520 | |
| | | 8 | " | 3,520 | |
| | | 9 | " | 3,520 | |
| | | 10 | " | 3,520 | |
| | | 11 | " | 3,520 | |
| | | 12 | " | 3,520 | |
| | | 13 | " | 3,520 | |
| | | 14 | " | 3,520 | |
| | | 15 | " | 3,520 | 52,800 |
| | 35 | 1 | " | 6,424 | |
| | | 2 | " | 5,110 | 11,534 |
| | 36 | 1 | " | 5,478 | |
| | | 2 | " | 4,357½ | 9,835½ |
| | 37 | 1 | " | 6,028 | |
| | | 2 | " | 6,028 | |
| | | 3 | " | 6,028 | |
| | | 4 | " | 6,028 | |
| | | 5 | " | 6,028 | |
| | | 6 | " | 6,028 | |
| | | 7 | " | 6,028 | |

| Location | Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|---|
| | | 8 | All | 6,028 | |
| | | 9 | " | 6,028 | |
| | | 10 | " | 6,028 | |
| | | 11 | " | 6,028 | |
| | | 12 | " | 6,028 | |
| | | 13 | " | 6,028 | |
| | | 14 | " | 6,028 | |
| | | 15 | " | 6,028 | 90,420 |
| Riddle's Sub Div . | 11 | 1 | " | 5,077⅓ | |
| | | 2 | " | 5,077⅓ | |
| | | 3 | " | 5,077⅓ | |
| | | 14 | Part | 3,957⅓ | |
| | | 15 | All | 5,077⅓ | |
| | | 16 | " | 5,077⅓ | |
| | | 17 | " | 5,040 | |
| | | 18 | " | 5,040 | |
| | | 19 | " | 5,040 | |
| | | 20 | " | 5,040 | 49,504 |
| | 12 | 1 | " | 5,077⅓ | |
| | | 2 | " | 5,077⅓ | |
| | | 3 | Part | 2,538⅔ | |
| | | 8 | " | 5,100 | |
| | | 9 | All | 5,077⅓ | |
| | | 10 | " | 5,077⅓ | |
| | | 11 | Part | 2,538⅔ | 30,486⅓ |
| | 33 | 1 | All | 5,440 | |
| | | 2 | " | 5,440 | |
| | | 3 | " | 5,440 | |
| | | 12 | " | 5,440 | |
| | | 13 | " | 5,440 | |
| | | 14 | " | 5,440 | |
| | | 15 | " | 4,488 | |
| | | 16 | " | 4,488 | 41,616 |
| | 34 | 1 | " | 5,440 | |
| | | 2 | " | 5,440 | |
| | | 3 | " | 5,440 | |
| | | 12 | " | 5,440 | |
| | | 13 | " | 5,440 | |
| | | 14 | " | 5,440 | |
| | | 15 | " | 4,488 | |

| Location | Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|---|
| | | 16 | All | 4,448 | 41,616 |
| | 37 | 14 | " | 5,608 | 5,608 |
| | 38 | 1 | " | 5,440 | |
| | | 2 | " | 5,440 | |
| | | 3 | " | 5,440 | |
| | | 11 | " | 5,440 | |
| | | 12 | " | 5,440 | |
| | | 13 | " | 5,440 | |
| | | 14 | " | 5,440 | |
| | | 15 | " | 3,944 | |
| | | 16 | " | 3,944 | 45,968 |

| T. | R. | Sec. | Part of Section | Acres | Total Acres |
|---|---|---|---|---|---|
| 74 N | 44W | 2 | NW ¼ All-Credit Mobelier | 146.44 | |
| | | | SW ¼ NE ¼ All-Credit Mobelier ..... | 40.00 | |
| | | 3 | Entire Section. Credit Mobelier ..... | 604.66 | 791.10 |
| 75 | 44 | 33 | S ½ Pt. Right of Way... | 16.05 | |
| | | | S ½ Pt. Wagon Approach | 12.68 | |
| | | 34 | S ½ Pt. Right of Way SE ¼ Pt. Transfer grounds | 42.83 | |
| | | 35 | SW ¼ Pt. Transfer grounds ..... | 155.24 | 262.29 |

CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA.

| T. | R. | Sec. | Part of Section | Acres | Total Acres |
|---|---|---|---|---|---|
| 15 N | 13 E | 23 | Lot 4 part—Bridge approach | 0.87 | |
| | | | Lot 4 part—Bridge approach | 0.30 | |
| | | | Lot 4 part—Bridge approach | 0.30 | |
| | | | Lot 4 part—Bridge approach | 0.47 | |
| | | | Lot 4 part—Bridge approach | 0.61 | |
| | | | Lot 4 part—Bridge approach | 2.07 | |
| | | | Lot 4 part—Bridge approach | 2.21 | |
| | | | Lot 4 part—Bridge approach | 1.59 | |
| | | 22 | SE ¼ SW ¼ part—Rt. of Way | 0.23 | |
| | | 27 | NW ¼ — part Right of Way | 5.95 | |
| | | | NW ¼ — part extra R. O. W. | 0.29 | |

| Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|
| 200 | 7 | Part | 247 | 2,227 |
| | 8 | " | 1980 | |
| 201 | 5 | " | 4620 | |
| | 6 | " | 7260 | |
| | 7 | " | 8531 | |
| | 8 | " | 7590 | 28,001 |
| 202 | 4 | " | 2772 | |
| | 5 | All | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 37,620 |
| 203 | 4 | Part | 5808 | |
| | 5 | All | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | Part | 3564 | 35,508 |
| 204 | 2 | " | 1386 | |
| | 3 | " | 2706 | |
| | 5 | All | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 38,940 |
| 205 | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | Part | 2508 | 28,644 |
| 206 | 5 | All | 8712 | |
| | 6 | " | 8712 | 17,424 |
| 208 | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 60,984 |
| 215 | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |

| Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 7 | All | 8712 | 52,272 |
| 216 | 1 | Part | 3300 | |
| | 2 | " | 4620 | |
| | 3 | " | 5940 | |
| | 4 | All | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 57,420 |
| 217 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 218 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 219 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | Part | 3300 | |
| | 6 | " | 4620 | |
| | 7 | " | 5940 | |
| | 8 | " | 7260 | 55,968 |
| 220 | 1 | " | 3069 | |
| | 2 | " | 1287 | |
| | 3 | " | 45 | 4,401 |
| 223 | 1 | " | 3234 | |
| | 2 | " | 5280 | |
| | 3 | " | 7722 | |
| | 4 | All | 8712 | |
| | 5 | Part | 575 | 25,523 |

| Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | | | 2904 | |
| 224 | 1 | Part | 2363 | |
| | 2 | " | 3465 | |
| | 5 | " | 6963 | |
| | 6 | " | 8712 | |
| | 7 | All | 8415 | 30,822 |
| | 8 | Part | 5478 | |
| 226 | 1 | " | 2178 | |
| | 2 | " | 44 | |
| | 3 | " | 5610 | |
| | 5 | " | 8393 | |
| | 6 | " | 8712 | |
| | 7 | All | 6534 | 36,949 |
| | 8 | Part | 1890 | |
| 227 | 3 | " | 5940 | |
| | 4 | " | 8712 | 16,542 |
| | 6 | All | 8712 | 8,712 |
| 228 | 4 | " | 8712 | |
| 231 | 1 | " | 8712 | 17,424 |
| | 2 | " | 6930 | |
| 234 | 1 | Part | 5610 | |
| | 2 | " | 4191 | |
| | 3 | " | 2706 | 19,437 |
| | 4 | " | 8712 | |
| 235 | 1 | All | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 660 | |
| | 5 | Part | 2310 | |
| | 6 | " | 4455 | |
| | 7 | " | 4170 | 46,443 |
| | 8 | " | 8712 | |
| 236 | 2 | All | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | 52,272 |
| | 7 | " | 2006 | |
| 255 | 3 | Part | 7531 | 9,537 |
| | 4 | " | | |

| Street | Part or Street | Square Feet | Total Feet |
|---|---|---|---|
| Mason | East of 6th | 22,300 | |
| " | Bet. 6th & 7th | 30,175 | |
| " | " 7th & 8th | 30,175 | |
| " | " 8th & 9th | 20,035 | 102,685 |
| Marcy | " 7th & 8th | 18,134 | |
| " | " 8th & 9th | 31,400 | |
| " | " 9th & 10th | 28,900 | 78,434 |
| Sixth | " Pacific & Mason | 30,900 | |
| " | " Mason & Marcy | 22,430 | |
| " | " Marcy & Leavnwth | 5,280 | 58,610 |
| Seventh | " Pacific & Mason | 4,190 | |
| " | " Mason & Marcy | 9,080 | 13,270 |
| Eighth | South of Mason | 3,875 | |
| " | Bet. Mason & Marcy | 33,400 | |
| " | " Marcy & Leavnwth | 3,708 | 40,938 |
| Ninth | " Mason & Marcy | 32,040 | |
| " | " Marcy & Leavnwth | 15,000 | 47,040 |
| Fourteenth | " Mason & Marcy | 6,504 | 6,504 |
| | Alleys in Block 202 | 5,280 | |
| | 204 | 4,394 | |
| | 215 | 3,960 | |
| | 216 | 5,280 | |
| | 217 | 5,280 | |
| | 218 | 5,280 | |
| | 219 | 5,280 | |
| | 235 | 5,280 | |
| | 236 | 3,960 | 43,994 |

## Bridge Division. Tracks and Structures.

*Rail in Main and Second Tracks.*

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Steel rail weighing | 52 | lbs | per | yard | ..... | 1.18 | miles |
| " " " | 56 | " | " | " | ..... | 0.16 | " |
| " " " | 60 | " | " | " | ..... | 1.38 | " |
| " " " | 67 | " | " | " | ..... | 5.41 | " |
| " " " | 70 | " | " | " | ..... | 0.07 | " |
| " " " | 75 | " | " | " | ..... | 1.42 | " |

Council Bluffs—

24 M. 1304 ft. Side Tracks.

| | | |
|---|---|---|
| Depot (Broadway) | Brick | (30x45) (58x68) |
| Pass. depot & Hotel (Transfer) | Stn. & Brk | 60x209 |
| "L" Add | Brick | 40x120 |
| "L" Add | " | 40x169 |
| Bakery | " | 12x27 |
| Ice House | " | 12x25 |
| Store House | " | 24x60 |
| Ice House | Frame | 20x50 |
| Freight house | " | 20x124 |
| Addn | " | 16x88 |
| Addn | " | 16x65 |
| Addn | " | 10x12 |
| Addn | " | 40x50 |
| Boiler House | " | 24x842 |
| Freight shed | " | 16x758 |
| " " | " | 12x40 |
| Freight office | " | 34 ft. |
| Track scale | " | 20x30 |
| Tenement House | " | 12x14 |
| Addn | " | 20x30 |
| Tenement House | " | 12x14 |
| Addn | " | 20x30 |
| Tenement House | " | 12x14 |
| Addn | " | 20x30 |
| Tenement House | " | 12x14 |
| Addn | " | 20x30 |
| Tenement House | " | 12x14 |
| Addn | " | 20x30 |
| Tenement House | " | 12x14 |
| Addn | " | 30x150 |
| Car Rep. & Store House | " | 16x28 |
| Blacksmith shop | | |

| | | |
|---|---|---|
| Oil House | Brick | 20x29 |
| Boiler House | Stn. & Brk. | 20x40 |
| Coal House | Frame | 16x32 |
| " | " | 24x100 |
| Coal chute 32 Pockets | " | 30x98 |
| Office | " | 16x40 |
| Sand House | " | 24x26 |
| Stock Yards | " | 88x132 |
| 3 Stand pipes | | |
| Hose House | Frame | 14x16 |
| Freight House—10th Ave. Line | " | 40x110 |
| Track Scales | | 34 ft. |
| Lamp room | " | 12x24 |
| Tool room | " | 14x26 |
| Ice house | " | 33x93 |
| Ice House | Frame | 37x139 |
| Round House (20 Stalls) | Stn. & Brk. | |
| Turntable | | 60 ft. |

Omaha—

12 M 1147 ft. Side Tracks.

| | | |
|---|---|---|
| Store House | Frame | 14x40 |
| Shed | " | 14x24 |
| Tenement House | " | 24x26 |
| Addn | " | 8x16 |
| Paint store house | " | 16x42 |
| Carpenter shop | " | 28x47 |
| Addn | " | 10x12 |
| Lime House | " | 14x30 |
| Ice House | " | 30x100 |
| Y'd Master's Office | " | 14x30 |
| Car Repairer's Hse | " | 20x50 |
| Carpenter shop | " | 40x110 |
| Lime House | " | 14x30 |
| Track Scales | " | 45 ft. |

1 Stand pipe—water from city mains .

129. That the following schedule, marked "Schedule 2," is a more particular description of a portion of the property above described, the record title of which stands in the names of trustees for the Union Pacific Railway Company, as thereon shown, which property is included in the property of the Omaha Bridge Division of said railway.

## SCHEDULE 2.

LIST OF PROPERTY UNION PACIFIC RAILWAY COMPANY, THE TITLE TO WHICH IS VESTED IN TRUSTEES, AS SHOWN BY THE RECORDS OF THE CHIEF ENGINGEER'S OFFICE, AND OF THE LAND DEPARTMENT, APRIL 17, 1897.

### BRIDGE DIVISION.

| Description. | Acres |
|---|---|
| POTTAWATOMIE COUNTY, IOWA. | |
| Commencing at a point 471.5 ft. South of the northeast corner of the NW ¼ of SE ¼ of Sec. 34, T. 75 N. R. 44 W. of the 5th P. M., thence (taking the 40 acre line for due north and south line) S 57 deg. 31 ft. W. 369.23 ft.; thence West to a point 676.5 ft. south and 329.34 ft. east of the center of said Sec. 34; thence south parallel with the North and South center line of said Sec. 34,660 ft. to a point in the present North Right of Way line of the Union Pacific Ry. Co.; thence East on said R. O. W. line 913.16 ft.; thence Northeasterly 89 ft. to a point in 40 acre line 60 ft. more or less North of the SE corner of the NW ¼ of SE ¼ of said Sec. 34; thence North on said 40 acre line 795.3 feet to the place of beginning, containing an area of ..... | 15.42 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| A tract in the NE ¼ of SE ¼ of Sec. 34 T. 75 N. R. 44 W. of 5th P. M. of Iowa, described as follows: Commencing at a point 185.3 ft. South from the East quarter section corner of said Sec. 34, running thence south on Section line 389.2 ft. or to grounds as now owned by Union Pac. Railway Co.; thence Southwesterly on Northerly line of said grounds 1484 feet to West line of said NE ¼ of SE ¼ ; thence North on said line 1080 ft.; thence East 1323 feet or to place of beginning. | |
| Except tract sold to S. H. Finney, described as follows: Commencing at a point 537 feet south from the East ¼ Section corner of said Sec. 34 and running thence south 39½ ft. to Union Pacific Ry. | |

| Description. | Acres. |
|---|---|
| grounds; thence southwesterly on northerly line of said grounds 270¾ feet; thence N. 30 deg. W. 188¾ ft.; thence East 335 ft. to place of beginning, containing 0.737 of an acre hereby conveying to said Trustees ... | 21.56 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| SW ¼ of NE ¼ and NW ¼ of Sec. 2 and all Sec. 3, all in Township 74, Range 44 West ..... | 791.10 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| A tract of land in the NE ¼ of SE ¼ Sec. 34, T. 75 N. R. 44 W. in Pottawatomie Co., Iowa, described as follows: Commencing at a point 537 ft. south from the East ¼ Section corner of said section 34, and running thence south 39½ feet to U. P. Ry. ground; thence southwesterly on northerly line of said grounds 270¾ feet; thence north 30 deg. West 188¾; thence East 335 feet to place of beginning, containing an area of ..... | 0.74 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| The East 44 feet of Lot 1; the East 44 feet and the west 22 feet of Lot 2, and all of lots 3 and 5, all in Block 9 in Grimes Addition to Council Bluffs ..... | 0.6 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Part of Lots 4 and 6 in Block 9 in Grimes Addition to Council Bluffs not in Union Avenue ..... | 0.4 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| That portion of Lot 7 in Block 9 in Grimes Addition to the City of Council Bluffs not taken and used for the Right of Way of "Union Avenue"..... | 0.0 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Part of Lots 1, 2, 3, 4, and 5, in Block 13, in Bayliss Addition to Council Bluffs not in Union Avenue ..... | 0.5 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| An undivided half of Lots 1, 2, and 3 in Block 11 in the Subdivision of Riddle Tract in the City of Council Bluffs. All the interest of J. S. Casement, Mary Lockwood Casement, Robert L. Casement, Grey Casement and | |

| Description. | Acres. |
|---|---|
| Daniel Wells Casement in and to Lots 1, 2 and 3 in Block 11 in Riddle's Sub-division of the City of Council Bluffs, Iowa ..... | 0.36 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All the North 35⅓ feet of Lot 14 and all of Lots 15 & 16 in Block 11; all in the Subdivision of the Riddle tract, City of Council Bluffs ..... | 0.32 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 17 in Block 11 in Sub-division of the Riddle tract, City of Council Bluffs ..... | 0.12 |
| All of Lot No. 18 in Block 11 in Sub-division of Riddle tract, City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 19 in block 11 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 20 in Block 11 in the Sub-disivion of the Riddle tract in the City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 1, 2, 9, & 10 in Block 12; also the North 22⅔ ft. of Lot 3 in Block 12 and the North 22⅔ ft. of Lot 11 in Block 12 and the North 113⅓ ft. of lot 8 in Blk. 12; all in the sub-division of the Riddle tract of Council Bluffs..... | 0.70 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lot 1 in Block 33 in the Sub-division of the Riddle tract in the City of Council Bluffs. | |
| All of Lot 2 in Block No. 33 in Sub-division of the Riddle tract, City of Council Bluffs..... | 0.25 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lot 3 in Block 33 in Sub-division of the Riddle tract in the City of Council Bluffs..... | 0.25 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 13 and 14 in Block 33 of Sub-division of Riddle tract, City of Council Bluffs..... | 0.25 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| All of Lot 15, Block 33 in the Subdivision of Riddle tract, City of Council Bluffs ..... | |
| All Lot 16 in Block 33 in the Sub-division of the Riddle tract in the City of Council Bluffs..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 1 in Block 34 in Sub-division of the Riddle tract, City of Council Bluffs. | |
| Lot 2 and 3 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs..... | 0.37 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 12, 13 and 14 in Block 34 in Sub-division of Riddle tract, City of Council Bluffs ..... | 0.38 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 15 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.10 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lot 16 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.10 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 14 in the Block 37 in Sub-division of the Riddle tract, City of Council Bluffs ..... | 0.13 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 1, 2 & 3 in Block 38 in Sub-divisions of the Riddle tract, City of Council Bluffs ..... | 0.37 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lot 11 in Block 38 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lots 12, 13 & 14 in Block 38 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.37 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 15 in Block 38 in Sub-division of the Riddle tract, City of Council Bluffs ..... | |
| All of Lot 16 in Block 38 in Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.18 |
| DEXTER, ATKINS & LANE, TRUSTEES. | |

## DOUGLAS COUNTY, NEBRASKA.

### City of Omaha.

| Description. | Acres. |
|---|---|
| Lots 2 and 3 in Block 208 in the City of Omaha, as surveyed and lithographed subject to taxes thereon for the year 1886 ..... | 0.40 |
| Atkins, Baker & McFarland, Trustees. | |
| Lot 4 in Block 208 in the City of Omaha, as surveyed and platted ..... | 0.20 |
| Atkins, Baker & McFarland, Trustees. | |
| Lot 5 in Block 208 in the City of Omaha, as surveyed and platted ..... | 0.20 |
| Atkins, Baker & McFarland, Trustees. | |
| Lot 6 in Block 208 in the City of Omaha ..... | 0.20 |
| Atkins, Baker & McFarland, Trustees. | |
| Lot 2 in Block 215 in the City of Omaha..... | 0.20 |
| Atkins, Baker & McFarland, Trustees. | |
| Lot 3 in Block 215 in the City of Omaha..... | 0.20 |
| Atkins, Baker & McFarland, Trustees. | |
| Lot 4 in Block No. 215 in the City of Omaha, as surveyed and platted. Subject to the following leases, which have been this day assigned by the said Grantor to John R. Manchester, in trust for the Union Pacific Railway Co. and taxes of 1886.<br>Leases: From Jacob Pflug to Jacob Schlechter, dated Aug. 8, '83, for 4 y. 8 mo. from date.<br>From Jacob Pflug to Frederick Krause, dated July 16, 1880, for 5 y. from date and ext. 3 y.<br>From Jacob Pflug to Malcom Christensen dated Apr. 1, 1886, for 3 yrs. from date.<br>From Jacob Pflug to Joseph Schlechter, dated Apr. 2 1886, for 3 yrs from date.<br>From Jacob Pflug to Henry Brockner, dated April 1, 1886, for 3 yrs. from date.<br>From Jacob Pflug to Patrick Murphy, dated April 6, for 3 years from date ..... | 0.20 |
| Atkins, Baker & McFarland, Trustees. | |

| Description. | Acres. |
|---|---|
| Part of Lot 2 (being 2,178 sq. ft.), in Block No. 226, in the City of Omaha, according to the recorded plat thereof ..... | |
| ATKINS, DEXTER & LANE, TRUSTEES. | |
| Commencing at a point 346 feet north of the SE corner of the SW ¼ of the SW ¼ of section 23 in T 15 N of R 13 E of the 6th P. M.; thence east 410 feet; thence south 88 ft.; thence west 240 ft.; thence north 56 ft.; thence west 170 ft.; thence north 32 feet to the place of beginning. Containing 26,560 square feet..... | 0.61 |
| ATKINS, BAKER & MCFARLAND TRUSTEES., | |

UNION DIVISION PROPERTY.

130. That the property which is embraced in, and appertains to, said Union Division of said Union Pacific Railway Company, is described as follows, to-wit:

The railroad, railroad right of way and railroad property extending from the initial point of construction of the Union Pacific Railroad, near the northeast corner of, and within, section 10, township 15, range 13, east of the 6th principal meridian, in Omaha, Nebraska, in a southerly and westerly direction through the City of Omaha to Twentieth Street in said city of Omaha, to a junction with the Omaha Bridge Division of the said railway (excepting, however, about 4,950 feet of track next southerly from said point of commencement which has heretofore been abandoned), thence in a westerly direction through the counties of Douglas, Sarpy, Dodge, Colfax, Platte, Merrick, Hall, Buffalo, Dawson, Lincoln, Keith, Deuel, Cheyenne and Kimball in the State of Nebraska. and Sedgwick County in the State of Colorado, and the Counties of Laramie, Albany, Carbon, Sweetwater and Uinta, in the State of Wyoming, and the Counties of Summit, Morgan, Davis and Weber, in the State of Utah, to a Junction with the Central Pacific Railroad at a point about five miles west of Ogden in the State of Utah, a distance of 1,038.43 miles.

131. Also, the right of way and railroad track constituting a branch line of railroad extending from a point of junction with said main line at Almy Junction, Wyo-

ming, in a northerly direction to a terminus at Mine No. 7, said branch line being 3.88 miles in length.

132. Also, the right of way and railroad track constituting a branch line of railroad extending from a point of junction with said main line of said railroad in Cheyenne, Wyoming, in a northwesterly direction to a connection with the track of the Union Pacific, Denver and Gulf Railway, a distance of 2.04 miles.

133. The total length of the main line of railroad of the Union Division as above described, including said branches, being 1044.35 miles, of which 9.98 miles of the main line thereof, extending from Gilmore eastward into the Union Division yards at Omaha, is a double track railroad.

134. Also, the right of way and railroad track constituting a spur or branch line of railroad, extending from the eastern end of said main line of track in Omaha as above described, being a point about 4,950 feet southerly from the point of original construction of said railroad, northerly and easterly for a distance of about 18,000 feet, which spur track is operated to reach certain ice houses and industries.

135. Also, the lots, yards, terminal grounds, shop grounds, station grounds, streets and alleys, and other tracts of land owned, acquired or appropriated by or for the said Union Pacific Railway Company for the purposes of its said railroad, including lands aggregating in area about 371.94 acres of land in the City of Omaha.

136. Also the shops, freight depots, general office building, round house and other structures and facilities upon said premises constructed or acquired for or used for the purposes of, or in connection with, said railway property.

137. Also the right of way, station, terminal and other grounds of the said railway company pertaining to or acquired or used in connection with or for the purposes of the said Union Division of said railway, along said line thereof, including certain lands the title to which stands in the names of certain trustees for said Union Pacific Railway Company, as hereinafter more fully stated.

138. Also the depots, engine houses, car houses, station houses, warehouses, machine shops, workshops and other structures and facilities thereon or connected

therewith, constructed, appropriated or used for or in connection with the said Union Division of said railway for the running or operation thereof.

139. Also the switches, turnouts, sidings and spurs aggregating in length about 53 miles of track in the said City of Omaha, and about 11¼ miles of track in the City of Ogden, Utah, and in all about 376.75 miles of track.

140. Also the lands, and interests and easements in lands, water rights, pipes, pump houses, structures, pipe lines, appliances, facilities and easements of the said railway company pertaining to or connected with the water supply of said railway company upon or along its said railroad.

141. Also the tools, appliances, fixtures, supplies and materials located on or along the said Union Division of said railroad property, or acquired or provided for use in connection therewith, or for the purposes thereof.

142. Also the locomotives, passenger cars, Pullman sleeping cars, dining cars, freight cars and other cars, and the equipment and rolling stock, and all interest of said railway company in equipment and rolling stock, owned, acquired or provided for said railway company, for the purposes of said Union Division thereof or necessary to said division for the running and operation thereof, the same being seventy per cent of all such equipment and rolling stock and interest in equipment and rolling stock owned or acquired by said railway company.

143. Also the line of telegraph, telegraph material, instruments, fixtures and appliances belonging to the said railway company and located upon and provided for and pertaining to said Union Divisoin of said property.

144. Also all the furniture, fixtures, appliances, apparatus, supplies and material in the various offices of said railway company upon or remote from said line of railroad, including the principal offices of said company at Omaha and Boston, owned, acquired or provided for use in connection with said Union Division of said railway property.

145. Also all the rights and property of the character as above owned or provided for common use of the several divisions of said railway company's property to the extent of the proportionate use and devotion thereof to the busi-

ness and concerns of the said Union Division of said railway company's property.

146. Also the rights and interests of said Union Pacific Railway Company in or to property of every kind and nature whether of the character as herein described or otherwise, owned, acquired or provided for the use of said Union Division of its said railway.

147. Also the corporate rights and franchises of said Union Pacific Railway Company so far as they pertain to said Union Division thereof.

148. Also the moneys, credits and property not herein otherwise specified, in the possession of the Receivers herein, or to which they are or may be entitled, which have been or may be derived by said Receivers from or on account of the property of the Union Pacific Railway Company pertaining to the Union Division thereof, or from the sale or other disposition of any said property or from the use of the same, or from the operation thereof by said Receivers, subject to the charges of said Receivers in respect thereto.

149. That the following schedule marked "Schedule 3" is a more particular description of portions of the property above described as included in the Union Division of said Railway Company's property.

## SCHEDULE 3.

DESCRIPTION OF PROPERTY OF THE UNION PACIFIC RAILWAY COMPANY INCLUDING RIGHT OF WAY, STATION GROUNDS, TRACKS AND STRUCTURES.

### UNION DIVISION.

| | |
|---|---|
| MAIN LINE: Extending from Initial Point near Northeast corner Section 10, T. 15 N. R. 13 E. Omaha, Neb. in a westerly direction, to connection with the Central Pacific Railroad at a point five miles west of Ogden, Utah Ter., said five miles being leased to the Central Pacific Railroad Company | 1038.43 mls. |
| BRANCH LINES: Extending from junction with the Main Line at Almy Junction, Wyo., in a northerly direction to terminus at Mine No. 7, exclusive of 1.72 miles owned by the Rocky Mountain Coal & Iron Co | 3.88 mls. |
| Extending from junction with the Main line of Cheyenne, Wyo., in a northwesterly direction in connection with track of the U. P. D. & G. Ry. Co | 2.04 mls. |
| Total Mileage Main Track | 1044.35 mls. |
| Mileage Second Main Track | 9.98 mls. |

# RIGHT OF WAY AND STATION GROUNDS.

## City of Omaha, Douglas County, Nebraska.

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| C | 1 | Entire Lot | 7920 | |
| | 2 | Part of Lot | 7075 | |
| | 3 | " | 4863 | |
| | 4 | " | 132 | |
| | 7 | " | 5290 | |
| | 8 | " | 5431 | 30,711 |
| F | 5 | Entire Lot | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | 26,136 |
| L | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| M | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| N | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| O | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 6 | Entire Lot ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| P | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 1 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | |
| | 9 | " ..... | 8712 | |
| | 10 | " ..... | 8712 | |
| | 11 | " ..... | 9241 | |
| | 12 | " ..... | 10890 | 103,026 |
| 2 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 3 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 4 | 1 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 2 | Entire Lot | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 5 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 6 | 1 | Part of Lot | 6001 | |
| | 2 | " | 537 | 6,538 |
| 28 | 1 | Entire Lot | 8712 | |
| | 2 | Part of Lot | 8068 | |
| | 3 | " | 2537 | |
| | 7 | " | 391 | |
| | 8 | " | 5284 | 24,992 |
| 29 | 1 | Entire Lot | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 30 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 31 | 1 | " | 8712 | |
| | 2 | " | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 3 | Entire Lot ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 32 | 1 | " ..... | 15850 | |
| | 2 | " ..... | 16500 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | |
| | 9 | " ..... | 8712 | |
| | 10 | " ..... | 8712 | |
| | 11 | " ..... | 18150 | 138,996 |
| | 12 | " ..... | 19800 | |
| 33 | 1 | " ..... | 12408 | |
| | 2 | " ..... | 13992 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 11616 | 77,352 |
| | 7 | " ..... | 13200 | |
| 34 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 35 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |

| Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|
| 8 | Entire Lot | 8712 | 69,696 |
| 1 | " | 8712 | |
| 2 | " | 8712 | |
| 3 | " | 8712 | |
| 4 | " | 8712 | |
| 5 | " | 8712 | |
| 6 | " | 8712 | |
| 7 | " | 8712 | 69,696 |
| 8 | " | 8712 | |
| 1 | " | 8712 | |
| 2 | " | 8065 | |
| 3 | Part of Lot | 3696 | |
| 4 | " | 768 | |
| 6 | " | 8360 | |
| 7 | " | 2937 | 40,250 |
| 8 | " | 8712 | |
| 1 | Entire Lot | 8712 | |
| 2 | " | 8712 | |
| 3 | " | 8712 | |
| 4 | " | 8712 | |
| 5 | " | 8712 | |
| 6 | " | 8712 | |
| 7 | " | 8712 | 69,696 |
| 8 | " | 8712 | |
| 1 | " | 8712 | |
| 2 | " | 8712 | |
| 3 | " | 8712 | |
| 4 | " | 8712 | |
| 5 | " | 8712 | |
| 6 | " | 8712 | |
| 7 | " | 8712 | 69,696 |
| 8 | " | 8712 | |
| 1 | " | 8712 | |
| 2 | " | 8712 | |
| 3 | " | 8712 | |
| 4 | " | 8712 | |
| 5 | " | 8712 | |
| 6 | " | 8712 | |
| 7 | " | 8712 | 69,696 |
| 8 | " | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| 66 | 1 | Entire Lot | 8448 | |
| | 2 | " | 10032 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | |
| | 9 | " | 8712 | |
| | 10 | " | 8712 | |
| | 11 | " | 11814 | |
| | 12 | " | 13266 | 113,256 |
| 67 | 1 | " | 9600 | |
| | 2 | " | 10800 | |
| | 3 | " | 12000 | |
| | 4 | " | 13200 | 45,600 |
| 68 | 1 | " | 7920 | |
| | 2 | " | 7920 | |
| | 3 | " | 7920 | |
| | 4 | " | 7920 | |
| | 5 | " | 7920 | |
| | 6 | " | 7920 | |
| | 7 | " | 7920 | |
| | 8 | " | 7920 | 63,360 |
| 69 | 1 | " | 7920 | |
| | 2 | " | 7920 | |
| | 3 | " | 7920 | |
| | 4 | " | 7920 | |
| | 5 | " | 7920 | |
| | 6 | " | 7920 | |
| | 7 | " | 7920 | |
| | 8 | " | 7920 | 63,360 |
| 94 | 1 | " | 7920 | |
| | 2 | " | 7920 | |
| | 3 | Part of Lot | 7056 | |
| | 4 | " | 4706 | |
| | 5 | " | 2991 | |
| | 6 | " | 506 | |
| | 7 | Part of Lot | 7872 | 46,391 |
| | 8 | Entire Lot | 7920 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| 95 | 1 | Entire Lot ..... | 7920 | |
| | 2 | " ..... | 7920 | |
| | 3 | " ..... | 7920 | |
| | 4 | " ..... | 7920 | |
| | 5 | " ..... | 7920 | |
| | 6 | " ..... | 7920 | |
| | 7 | " ..... | 7920 | |
| | 8 | " ..... | 7920 | 63,360 |
| 96 | 1 | " ..... | 9030 | |
| | 2 | " ..... | 10290 | |
| | 3 | " ..... | 7920 | |
| | 4 | " ..... | 7920 | |
| | 5 | " ..... | 7920 | |
| | 6 | " ..... | 7920 | |
| | 7 | " ..... | 11550 | |
| | 8 | " ..... | 12810 | 75,360 |
| 97 | 1 | " ..... | 9009 | |
| | 2 | " ..... | 10395 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | |
| | 9 | " ..... | 8712 | |
| | 10 | " ..... | 8712 | |
| | 11 | " ..... | 12441 | |
| | 12 | " ..... | 13827 | 115,368 |
| 98 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | 26,136 |
| 99 | 1 | Part of Lot ..... | 6429 | |
| | 2 | " ..... | 6245 | |
| | 8 | " ..... | 444 | 13,118 |
| 127 | 1 | Entire Lot ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | Entire Lot ..... | 8712 | |
| | 6 | Part of Lot ..... | 2640 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 7 | Entire Lot ..... | 8712 | |
| | 8 | " ..... | 8712 | 63,624 |
| 129 | 4 | " ..... | 650 | |
| | 5 | " ..... | 6410 | 7,060 |
| 130 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 43,560 |
| 156 | 1 | " ..... | 7590 | |
| | 2 | Part of Lot ..... | 1327 | |
| | 3 | " ..... | 160 | |
| | 7 | " ..... | 4224 | 13,301 |
| 157 | 5 | " ..... | 870 | |
| | 6 | " ..... | 7410 | 8,280 |
| 160 | 2 | Entire Lot ..... | 7009 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | Part of Lot ..... | 8296 | |
| | 6 | Entire Lot ..... | 8712 | 14,441 |
| 178 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 179 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 180 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 5 | Entire Lot ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 69,696 |
| | 8 | " ..... | 8712 | 8,712 |
| 181 | 1 | " ..... | 8712 | |
| 187 | 6 | " ..... | 7708 | 16,420 |
| | 7 | " ..... | 8712 | |
| 188 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | 34,848 |
| | 4 | " ..... | 8712 | |
| 189 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | 34,848 |
| | 4 | " ..... | 8712 | |
| 190 | 1 | " ..... | 5676 | |
| | 2 | Part of Lot ..... | 4488 | |
| | 4 | " ..... | 924 | |
| | 5 | " ..... | 75 | 28,587 |
| | 6 | " ..... | 1760 | |
| 191 | 1 | " ..... | 748 | |
| | 2 | " ..... | 8712 | |
| | 5 | Entire Lot ..... | 8712 | |
| | 6 | " ..... | 4686 | |
| | 7 | Part of Lot ..... | 3630 | 28,248 |
| | 8 | " ..... | 2567 | |
| 192 | 5 | " ..... | 3604 | |
| | 6 | " ..... | 8712 | |
| | 7 | Entire Lot ..... | 8712 | 23,595 |
| | 8 | " ..... | 8712 | |
| 200 | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8465 | |
| | 7 | Part of Lot ..... | 6732 | 32,621 |
| | 8 | " ..... | 8712 | |
| 201 | 1 | Entire Lot ..... | 8712 | |
| | 2 | " ..... | 4486 | |
| | 3 | Part of Lot ..... | 2836 | |
| | 4 | " ..... | 2904 | |
| | 5 | " ..... | 1452 | |
| | 6 | " ..... | | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 7 | Part of Lot ..... | 182 | 29,284 |
| 202 | 1 | Entire Lot ..... | 8712 | |
| | 2 | " ..... | 8812 | |
| | 3 | " ..... | 8712 | |
| | 4 | Part of Lot ..... | 5940 | 32,076 |
| 224 | 1 | " ..... | 5808 | |
| | 2 | " ..... | 8349 | |
| | 3 | Entire Lot ..... | 8712 | |
| | 4 | Part of Lot ..... | 3135 | |
| | 5 | " ..... | 5247 | |
| | 6 | " ..... | 1749 | 33,000 |
| 225 | 7 | Entire Lot ..... | 8712 | |
| | 8 | " ..... | 8712 | 17,424 |
| 226 | 1 | Part of Lot ..... | 3234 | |
| | 2 | " ..... | 6534 | |
| | 3 | " ..... | 3190 | |
| | 4 | " ..... | 3168 | |
| | 5 | " ..... | 3102 | |
| | 6 | " ..... | 319 | 19,547 |
| 286 | 1 | Entire Lot ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 299 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 300 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | Entire Lot ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 6 | Entire Lot | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 309 | 8 | " | 8712 | 8,712 |
| 310 | 8 | " | 8712 | 8,712 |
| 311 | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 26,136 |
| 312 | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 34,848 |
| 313 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 314 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 315 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 316 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 34,848 |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| 317 | 2 | Entire Lot ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 26,136 |
| 318 | 2 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 17,424 |
| 319 | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | 34,848 |
| 322 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 323 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 324 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 325 | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 34,848 |
| 326 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 4 | Entire Lot ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 69,696 |
| | 8 | " ..... | 8712 | |
| 327 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 69,696 |
| | 8 | " ..... | 8712 | |
| 328 | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | |
| 329 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 69,696 |
| | 8 | " ..... | 8712 | |
| 330 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 69,696 |
| | 8 | " ..... | 8712 | |
| 331 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 8 | Entire Lot | 8712 | 69,696 |
| 332 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 333 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 334 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | Part of Lot | 8121 | |
| | 4 | " | 4866 | |
| | 5 | Entire Lot | 8712 | |
| | 6 | Part of Lot | 6054 | |
| | 7 | " | 6071 | |
| | 8 | Entire Lot | 8712 | 59,960 |
| 354 | 1 | Part of Lot | 7768 | |
| | 2 | Entire Lot | 8712 | |
| | 8 | " | 8712 | 25,192 |
| 355 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | Part of Lot | 4915 | |
| | 6 | " | 7952 | |
| | 7 | Entire Lot | 8712 | |
| | 8 | " | 8712 | 65,139 |
| 356 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |

| Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|
| 5 | Entire Lot | 8712 | |
| 6 | " | 8712 | |
| 7 | " | 8712 | |
| 8 | " | 8712 | 69,696 |
| 1 | " | 8712 | |
| 2 | " | 8712 | |
| 3 | " | 8712 | |
| 4 | " | 8712 | |
| 5 | " | 8712 | |
| 6 | " | 8712 | |
| 7 | " | 8712 | |
| 8 | " | 8712 | 69,696 |
| 1 | " | 8712 | |
| 2 | " | 8712 | |
| 3 | " | 8712 | |
| 4 | " | 8712 | |
| 5 | " | 8712 | |
| 6 | " | 8712 | |
| 7 | " | 8712 | |
| 8 | " | 8712 | 69,696 |
| 1 | " | 8712 | |
| 2 | " | 8712 | |
| 3 | " | 8712 | |
| 4 | " | 8712 | |
| 5 | " | 8712 | |
| 6 | " | 8712 | |
| 7 | " | 8712 | |
| 8 | " | 8712 | 69,696 |
| 1 | " | 13068 | |
| 2 | " | 13068 | |
| 3 | " | 8712 | |
| 4 | " | 8712 | |
| 5 | " | 8712 | |
| 6 | " | 8712 | |
| 7 | " | 10989 | 72,732 |

| | Block | Lot | Description | Square Feet | Total Square Ft. |
|---|---|---|---|---|---|
| McCague's Addn | 7 | 5 | Part of Lot | 630 | |
| | 7 | 6 | " | 700 | |
| | 7 | 6 | " | 514 | 1,844 |
| Levee within corporate limits of city | | | | 12505 | 12,505 |

| Name of Street | Location | Sq. Ft. | Total Sq. Ft. |
|---|---|---|---|
| Capitol Ave | East of 7th | 21,840 | |
| " | Bet. 7th & 8th | 37,680 | 59,520 |
| Davenport St | East of 7th | 5,600 | |
| " | Bet. 7th & 8th | 31,400 | |
| " | " 8th & 9th | 27,954 | 64,954 |
| Chicago St | " 8th & 9th | 26,800 | |
| " | " 9th & 10th | 31,400 | 58,200 |
| Cass St | " 8th & 9th | 28,900 | |
| " | " 9th & 10th | 31,400 | |
| " | " 10th & 11th | 31,280 | 91,580 |
| California St | East of 9th | 6,200 | |
| " | Bet. 9th & 10th | 31,400 | |
| " | " 10th & 11th | 31,400 | |
| " | " 11th & 12th | 20,400 | 89,400 |
| Webster St | East of 10th | 19,200 | |
| " | Bet. 10th & 11th | 31,400 | |
| " | " 11th & 12th | 31,400 | |
| " | " 12th & 13th | 8,500 | 90,500 |
| Burt St | " 10th & 11th | 30,734 | |
| " | " 11th & 12th | 31,400 | |
| " | " 12th & 13th | 31,400 | |
| " | " 13th & 14th | 18,300 | 111,834 |
| Cuming St | East of 11th | 8,300 | |
| " | Bet. 11th & 12th | 31,400 | |
| " | " 12th & 13th | 31,400 | |
| " | " 13th & 14th | 30,124 | 101,224 |
| Seventh St | South of Capitol Ave. | 4,775 | |
| " | Bet. Capitol & Davenport | 29,000 | |
| " | " Davenport & Chicago | 10,800 | 44,575 |
| Eighth St | " Jones & Jackson | 28,400 | |
| " | " Capitol & Davenport | 29,000 | |
| " | " Davenport & Chicago | 27,700 | 85,100 |
| Ninth St | " Davenport & Chicago | 17,100 | |
| " | " Chicago & Cass | 33,400 | |
| " | " Cass & California | 33,400 | |
| " | " California & Webster | 11,700 | 95,600 |
| Tenth St | " Chicago & Cass | 33,400 | |
| " | " Cass & California | 33,400 | |
| " | " California & Webster | 33,400 | |
| " | " Webster & Burt | 31,168 | 131,368 |
| Eleventh St | " Chicago & Cass | 180 | |
| " | " Cass & California | 31,813 | |
| " | " California & Webster | 33,400 | |
| " | " Webster & Burt | 33,400 | |
| " | " Burt & Cuming | 33,400 | |
| " | " Cuming & Izard | 18,670 | 150,863 |
| Twelfth St | " California & Webster | 14,750 | |
| " | " Webster & Burt | 33,400 | |
| " | " Burt & Cuming | 33,400 | |
| " | " Cuming & Izard | 30,900 | 112,450 |
| Thirteenth St | " Webster & Burt | 25,125 | |
| " | " Burt & Cuming | 33,400 | |
| " | " Cuming & Izard | 30,900 | 89,425 |
| Fourteenth St | " Cuming & Izard | 5,880 | 5,880 |
| Alley in Block 3 | Entire | 5,280 | |
| 4 | " | 5,280 | |
| 5 | " | 5,280 | |
| 28 | Part | 1,140 | |

| Name of Street | | Description | Sq. Ft. | Total Sq. Ft. |
|---|---|---|---|---|
| | 29 | Entire | 5,280 | |
| | 30 | " | 5,280 | |
| | 31 | Part | 3,200 | |
| | 34 | " | 680 | |
| | 35 | Entire | 5,280 | |
| | 36 | " | 5,280 | |
| | 37 | Part | 2,360 | |
| | 63 | " | 2,220 | |
| | 64 | " | 2,440 | |
| | 65 | Entire | 5,280 | |
| | 178 | " | 5,280 | |
| | 179 | " | 5,280 | |
| | 322 | " | 5,280 | |
| | 323 | " | 5,280 | |
| | 324 | " | 5,280 | |
| | 331 | Part | 3,520 | |
| | 332 | Entire | 5,280 | |
| | 333 | " | 5,280 | |
| | 334 | Part | 4,980 | |
| | 354 | " | 1,320 | |
| | 355 | Entire | 5,280 | |
| | 356 | " | 5,280 | |
| | 357 | " | 5,280 | |
| | 358 | Part | 1,000 | 117,900 |
| th Omaha | 9 | Lot 10 Part | 1,428 | |
| | | 11 " | 5,635 | |
| | | 12 " | 5,450 | |
| | | 13 " | 5,700 | |
| | | 14 " | 875 | 19,088 |
| | 13 | 5 " | 1,485 | |
| | | 6 " | 4,700 | |
| | | 7 " | 5,995 | |
| | | 8 " | 5,450 | |
| | | 9 " | 3,075 | |
| | | 10 " | 10 | |
| | | 11 " | 5,920 | |
| | | 12 " | 3,875 | |
| | | 13 " | 2,000 | |
| | | 14 " | 220 | 32,730 |
| | 14 | 2 " | 1,746 | |
| | | 3 " | 6,082 | |
| | | 4 " | 5,312 | |
| | | 5 " | 580 | |
| | | 15 " | 1,330 | |
| | | 16 " | 5,760 | |
| | | 17 " | 5,800 | |
| | | 18 " | 1,280 | 27,890 |
| | 15 | 1 " | 6,187 | |
| | | 2 " | 2,140 | |
| | | 18 " | 3,000 | |
| | | 19 Entire | 6,250 | |
| | | 20 Part | 4,290 | 21,867 |
| | 16 | 20 " | 500 | 500 |

## COUNTY OF DOUGLAS.

| T. | R. | Sec. | Description | Acres | Total |
|---|---|---|---|---|---|
| 15N | 13E | 2 | NW ¼ NE ¼ R.O.W. 100 ft. wide | 3.22 | |
| | | | NE ¼ NW ¼ " 100 ft. " | 2.53 | |
| | | | SE ¼ NW ¼ " 100 ft. " | .69 | |
| | | | NE ¼ NE ¼ " 100 ft. " | 3.22 | |
| | | | SW ¼ NW ¼ " 50 ft. " | 1.61 | 11.27 |
| | | 3 | E ½ SE ¼ " 100 ft. " | 6.098 | 6.098 |
| | | 10 | NE ¼ NE ¼ " 100 ft. " | 3.058 | |
| | | | NE ¼ NE ¼ " 100 ft. " In. Pt. | 3.56 | |
| | | | Lot 3 Entire lot N. of Locust St | 26.77 | |
| | | | Lot 4 R.O.W. 100 ft. wide In. Pt. line | 3.07 | |
| | | | Lot 4 " 100 " | 3.07 | |
| | | | Lot 6 " 100 " In. Pt. line | 1.44 | |
| | | | Lot 6 " 100 " | 3.32 | 44.28 |
| | | 11 | Lot 1 South part | 9.13 | 9.13 |
| | | 14 | Lot 1 Part of lot | 25.34 | 25.34 |
| | | 15 | NE ¼ NE ¼ R.O.W. 100 ft. wide | 3.07 | |
| | | | Lot 4 East part of lot | 10.27 | 13.34 |
| | | 23 | Lot 3 Triangular tract on W. side | .236 | |
| | | | Lot 3 20 ft. strip on West side | .21 | |
| | | | Lot 3 15 ft " " | .20 | .646 |
| | | 22 | SE ¼ SW ¼ Strip 60 ft. wide | .34 | .34 |
| | | 27 | E ½ NW ¼ R.O.W. 70 ft. wide | 2.89 | |
| | | | SW ¼ NW ¼ R.O.W. 200 ft. wide | 7.71 | |
| | | | NW ¼ SW ¼ " | .52 | 11.12 |
| | | 28 | SE ¼ NE ¼ R.O.W | .10 | |
| | | | SE ¼ SE ¼ part—Sheely tract | 32.992 | |
| | | | SE ¼ SE ¼ R.O.W. 200 ft. wide | 6.44 | 39.532 |
| | | 33 | NE ¼ R.O.W. 200 ft. wide | 12.89 | |
| | | | N ½ S ½ R.O.W.200 ft. wide | 6.80 | |
| | | | N ½ S ½ Extra strips on E side | .35 | |
| | | | S ½ S ½ R.O.W. 190 ft. wide | 5.78 | 25.82 |
| 14 | 13 | 4 | NW ¼ R.O.W. 100 ft. wide | .56 | |
| 14 | 13 | 4 | NE ¼ Right of Way 100 ft. wide | 5.61 | |
| | | | SE ¼ " " 100 " | 6.35 | |
| | | | SE ¼ Part of St. South Omaha | 1.49 | 14.45 |
| | | 9 | NE ¼ R.O.W.100 ft. wide | 3.83 | 3.83 |
| | | 10 | SW ¼ NW ¼ R.O.W. 100 ft. wide | 3.28 | |
| | | | NW ¼ SW ¼ " 100 " | 1.81 | |
| | | | E ½ SW ¼ " 200 " | 10.76 | 15.85 |

## STATE OF NEBRASKA

| County | Description | Miles | Acres | Total Acres |
|---|---|---|---|---|
| Douglas | Right of Way 100 ft. wide | 8.4 | 101.97 | |
| | " " 200 " | 8.0 | 193.92 | |
| | " " 400 " | 7.4 | 358.6 | |
| | Millard Ex. Grds. 200 ft. wide | | 14.4 | |
| | Waterloo " | | 14.3 | |
| | Valley Lots 6 & 8 Blk 50 | | .4 | |
| | Mercer Extra Grds | | 28.5 | 712.19 |
| Sarpy | Right of Way 100 ft. wide | 12.83 | 155.75 | |
| | Gilmore Extra Grounds | | 32.50 | |
| | Papillion Ex. Grds. 300 ft. wide | | 18.2 | |
| | " " 200 ft. wide | | 9.2 | 215.65 |
| Dodge | Right of Way 100 ft. wide | 22.2 | 269.5 | |
| | " " 400 ft. wide | 3.0 | 145.38 | |
| | Fremont Depot Grds. 300 ft wide | | 14.9 | |
| | North Bend " 300 " | | 9.83 | 439.61 |

| County | Description | Miles | Acres | Total Acres |
|---|---|---|---|---|
| Colfax | Right of Way 100 ft. wide | 13.3 | 161.46 | |
| | " " 200 " | 1.5 | 36.36 | |
| | " " | 3.4 | 164.76 | |
| | Schuyler Depot Grds 300 ft. wide | | 13.75 | |
| | Extra Grds. in Sec. 13-17 N-3 E | | 15.75 | |
| | Benton Depot Grds | | 2.12 | 394.20 |
| Platte | Right of Way 100 ft. wide | 8.5 | 103.19 | |
| | " " 200 " | 2.3 | 55.75 | |
| | " " 400 " | 8.3 | 416.75 | |
| | Columbus Dep. Grds. Town Lts | | 6.62 | |
| | " " " Out Lot 6 | | 7.93 | |
| | " " " " " 7 ½ Int | | 9.25 | |
| | " " " 300 ft. wide | | 18.36 | |
| | Duncan " " | | 18.18 | 636.03 |
| Merrick | Right of Way 100 ft. wide | 1.9 | 23.06 | |
| | " " 200 " | 15.3 | 370.87 | |
| | " " 400 " | 27.8 | 1347.18 | |
| | Silver Cr'k Dep. Grds. 300 ft. wde | | 18.18 | |
| | Clarks " " 300 " | | 10.9 | |
| | Chapmans " " 300 " | | 9.09 | |
| | Central City " " 300 " | | 36.36 | 1815.64 |
| Hall | Right of Way 100 ft. wide | 2.6 | 31.56 | |
| | " " 200 " | 7.5 | 181.80 | |
| | " " 400 " | 15.2 | 726.59 | |
| | Gr'd Isl'd—Shop Grounds | | 158.50 | |
| | " " Stock yards grds | | 4.62 | |
| | " " 22 city lots | | 4.4 | |
| | Alda Depot Grds. 160 ft. wide | | 12.90 | |
| | Wood River Dep. Grds. 300 ft. wide | | 10.90 | 1141.27 |
| Buffalo | Right of Way 100 ft. wide | 2.7 | 32.77 | |
| | " " 200 " | 11.2 | 271.48 | |
| | " " 400 " | 24.3 | 1177.57 | |
| | Shelton Depot Grds. 300 ft. wide | | 18.18 | |
| | Gibbon " " 300 " | | 7.30 | |
| | Elm Cr'k " " 300 " | | 9.09 | |
| | Kearney Lot 234 | | 11.80 | |
| | " Depot Grds | | 4.56 | |
| | " Depot Grds. & Extra R. O. W | | 31.32 | 1564.07 |
| Dawson | Right of Way 100 ft. wide | 1.5 | 18.21 | |
| | " " 200 ft. wide | 12.1 | 293.30 | |
| | " " 400 ft. wide | 31.5 | 1526.49 | |
| | Overton Depot Grds. 300 ft. wide | | 9.09 | |
| | Lexington " 300 ft. " | | 18.18 | |
| | Cozard " 300 ft. " | | 7.27 | |
| | Gothenburg " 300 ft. " | | 21.60 | 1894.14 |
| Lincoln | Right of Way 100 ft. wide | 1. | 12.14 | |
| | " " 200 ft. " | 19.4 | 470.25 | |
| | " " 400 ft. " | 38.2 | 1851.17 | |
| | N. Platte Depot Grds. 700 ft. wide | | 84.82 | |
| | O'Fallon's " 200 ft. " | | 24.24 | 2442.62 |
| Keith | Right of Way 100 ft. wide | 1.5 | 18.21 | |
| | " " 200 ft. " | 13.3 | 322.39 | |
| | " " 400 ft. " | 26.7 | 1293.88 | |
| | Paxton Depot Grds. 100 ft. wide | | 6.07 | |
| | Ogallala " 300 ft. " | | 36.36 | 1676.91 |
| Deuel | Right of Way 100 ft. wide | 0.5 | 6.07 | |
| | " " 200 ft. " | 5.8 | 140.59 | |
| | " " 400 ft. " | 20.5 | 993.43 | |
| | Big Springs Depot Grds | | 9.00 | |
| | " Ex. Grds. E. of St'n | | 35.00 | 1184.09 |

| County | Description | Miles | Acres | Total Acres |
|---|---|---|---|---|
| Cheyenne ... | Right of Way 100 ft. wide | 1.1 | 13.35 | |
| | " " 200 ft. " | 16.2 | 392.68 | |
| | " " 400 ft. " | 23.9 | 1158.19 | |
| | Lodge Pole Depot Grds. 300 ft. wide | ..... | 14.5 | |
| | Sidney Depot Grds. & sundry lots | ..... | 13.25 | 1591.97 |
| Kimball .... | Right of Way 300 ft. wide | 17.75 | 645.39 | |
| | " " 400 " | 19.00 | 920.74 | 1566.13 |
| | STATE OF COLORADO. | | | |
| Sedgwick ... | Right of Way 100 ft. wide | 0.5 | 6.07 | |
| | " " 200 ft. " | 1.5 | 36.36 | |
| | " " 400 ft. " | 6.9 | 334.37 | |
| | Julesburg Dep. Grds. 300 ft. wide | ..... | 18.18 | |
| | " " reserved 28-12-44 | ..... | 34.69 | |
| | " " " 33-12-44 | ..... | 40.00 | 409.67 |
| | STATE OF WYOMING. | | | |
| Laramie .... | Right of Way (Cheyenne) 100 ft. wide | 2.75 | 33.38 | |
| | Right of Way (Cheyenne) 200 ft. wide | 18.00 | 436.32 | |
| | Right of Way (Cheyenne) 300 ft. wide | 4.35 | 158.16 | |
| | Right of Way (Cheyenne) 400 ft. wide | 44.65 | 2163.74 | |
| | Granite Canon Reservoir Sites, &c | ..... | 160.00 | |
| | Cheyenne Depot & Shop Grds. Gov. Lot 4 | ..... | 26.30 | |
| | Cheyenne Depot & Shop Grds. Gov. Lot 5 | ..... | 43.01 | |
| | Cheyenne Depot & Shop Grds. Lot 7 | ..... | 46.58 | |
| | Cheyenne Depot & Shop | ..... | 145.97 | |
| | Cheyenne Depot R. O. W. extra 100 ft. wide | ..... | 4.03 | |
| | Cheyenne R. O. W. extra 300 ft. wide | ..... | 17.70 | |
| | Cheyenne Grds. reserved 1 13-67 | ..... | 177.61 | |
| | Camp Carlin Spur R. O. W. pt. of lots | ..... | 3.17 | 3413.97 |
| Albany ..... | Right of Way 100 ft. wide | 1.0 | 12.14 | |
| | " " 400 ft. " | 94.49 | 4578.98 | |
| | Laramie Depot Grounds | ..... | 90.70 | |
| | " Soda Works Grds | ..... | 23.41 | |
| | " Grds. reserved 5-15-73 | ..... | 24.24 | |
| | Wyoming Grds. reserved | ..... | 46.55 | |
| | Cooper's lake pump hse. site | ..... | 2.00 | |
| | Rock Creek extra grounds | ..... | 9.25 | |
| | Aurora—Sec. 4-22-77 | ..... | 160.00 | 4947.27 |
| Carbon ..... | Right of Way 100 ft. wide | 0.8 | 9.71 | |
| | " " 400 ft. " | 85.75 | 4155.44 | |
| | Rawlins Depot Grds. reserved | ..... | 38.70 | |
| | Medicine Bow Depot Grds. 600 ft. wide | ..... | 36.36 | |
| | Medicine Bow, Reserved for Stock Yards | ..... | 49.60 | 4289.81 |
| Sweetwater.. | Right of Way 100 ft. wide | 0.43 | 5.22 | |
| | " " 400 ft. " | 153.14 | 7421.16 | |
| | Rock Springs Depot Grds. 300 ft. wide | ..... | 15.63 | |
| | Rock Springs Depot Grds | ..... | 8.78 | |
| | Green River " " | ..... | 27.20 | |
| | " " reserve in S. 23-18-107 | about | 184.00 | |
| | Granger reserved by Land Dept | ..... | 25.50 | 7687.49 |
| Uinta..... | Right of Way 100 ft. wide | 1.2 | 14.50 | |
| | " " 200 ft. wide | 11.30 | 273.91 | |
| | " " 400 ft. wide | 70.70 | 3426.12 | |
| | Aspen Ex. Grds. reserved | ..... | 54.50 | |
| | Evanston Depot Grds. reserved | ..... | 151.00 | 3920.00 |

| County | Description | Miles | Acres | Total Acres |
|---|---|---|---|---|
| | **STATE OF UTAH** | | | |
| Summit..... | Right of Way 200 ft. wide ..... | 1.08 | 26.17 | |
| | " " 400 ft. " ..... | 36.00 | 1744.56 | 1770.73 |
| Morgan ..... | Right of Way 200 ft. wide ..... | 1.62 | 39.26 | |
| | " " 400 ft. " ..... | 19.80 | 959.50 | |
| | ..... | ..... | 67.54 | 1066.30 |
| | Ex. Grds. reserved in 25 5 N-1 E ..... | 0.14 | 6.78 | 6.78 |
| Davis..... | Right of Way 400 ft. wide ..... | 6.2 | 75.26 | |
| Weber ..... | Right of Way 100 ft. wide ..... | 0.5 | 12.12 | |
| | " " 200 ft. " ..... | 9.8 | 474.90 | |
| | " " 200 ft. " ..... | ..... | 2.4 | |
| | Ogden Terminal Grd. Block 10..... | ..... | 15.17 | |
| | " " " " 1..... | ..... | 7.10 | |
| | " " " " 2..... | ..... | 6.87 | |
| | Ogden Terminal Joint C. P. & U. P. Blk. 1 ..... | ..... | 2.29 | |
| | Ogden Terminal Joint C. P. & U. P. Blk. 2..... | ..... | 32.74 | |
| | Ogden Terminal Joint C. P. & U. P. Blk. 3..... | ..... | 6.60 | |
| | Ogden Terminal Joint C. P. & U. P. Blk. 1..... | ..... | 23.95 | |
| | Ogden Terminal leased to Ogden Blk. 2 ..... | ..... | 26.61 | 716.01 |
| | Ogden Terminal Union Depot Co. Blk. 3 ..... | | | |

# UNION DIVISION.

## TRACKS AND STRUCTURES.

### *Rail in Main and Second Tracks.*

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Iron | rail | weighing | 50 | lbs. | per | yard | ..... | 0.78 mls. |
| " | " | " | 56 | " | " | " | ..... | 1.41 " |
| Steel | " | " | 52 | " | " | " | ..... | 4.82 " |
| " | " | " | 56 | " | " | " | ..... | 78.29 " |
| " | " | " | 60 | " | " | " | ..... | 317.40 " |
| " | " | " | 67 | " | " | " | ..... | 22.38 " |
| " | " | " | 70 | " | " | " | ..... | 373.59 " |
| " | " | " | 75 | " | " | " | ..... | 255.66 " |

| | | | |
|---|---|---|---|
| Omaha ..... | 52 M. 5258 Ft. Side Tracks. | | |
| | Barn ..... | frame | 36x78 |
| | Freight house ..... | brick | 33x128 |
| | Freight shed ..... | " | 128x241 |
| | Oil house ..... | " | 20x39 |
| | Yardmaster's office ..... | frame | 15x25 |
| | Track scales ..... | ..... | 36 ft. |
| | " " ..... | ..... | 64 ft. |
| | Sand house ..... | brick. | 24x60 |
| | Ice house ..... | frame | 30x100 |
| | Track scales ..... | ..... | 42 ft. |
| | 3 stand pipes, water from city mains. | | |
| | Record storage room ..... | frame | 30x90 |
| | Machine shop ..... | brick | 140x150 |
| | Office, shop & Eng. room ..... | " | 27x90 |
| | Addn ..... | " | 16x70 |
| | Machine shop ..... | " | 60x120 |
| | Blacksmith shop ..... | " | 76x200 |
| | Foundry ..... | frame | 76x305 |
| | Brass foundry ..... | brick | 39x49 |
| | Babbitting room ..... | " | 49x49 |
| | Sheet Iron shop ..... | " | 50x76 |
| | Tin shop ..... | " | 40x50 |
| | Addn ..... | " | 28x30 |
| | Addn ..... | " | 26x39 |
| | Locomotive repair shop ..... | frame | 38x125 |
| | Addn ..... | " | 20x32 |
| | Steam heating house ..... | " | 18x37 |
| | Car inspector's office ..... | " | 18x26 |
| | Office Supt. M. P. & M ..... | brick | 76x83 |
| | Boiler shop ..... | " | 80x150 |
| | Foundry, office & store hse ..... | frame | 14x127 |
| | Passenger car shop ..... | " | 60x590 |
| | Freight car shop ..... | " | 40x390 |
| | Flat car shop ..... | " | 30x390 |
| | Car machine shop ..... | " | 40x390 |
| | Eng. & boiler house ..... | brick | 40x50 |
| | Addn ..... | " | 16x22 |
| | Turntable at car shop. | | |
| | Air brake house ..... | frame | 12x14 |
| | Air brake store house ..... | " | 20x40 |
| | Paint store house ..... | " | 20x30 |
| | Pattern shop ..... | " | 30x80 |
| | Locomotive paint shop ..... | " | 20x78 |
| | Drying house ..... | brick | 21x73 |
| | Lumber houses, sheds, &c ..... | frame | |

| | | | |
|---|---|---|---|
| | Truck shop | frame | 40x58 |
| | Locomotive house | " | 32x160 |
| | Iron store house | " | 43x140 |
| | Charcoal house | " | 16x34 |
| | Fire engine house | brick | 30x103 |
| | Oil house | " | 24x37 |
| | Tender tank and truck hse | frame | 30x211 |
| | Carpenter shop | " | 16x28 |
| | Foundry shed | " | 24x167 |
| | Paint & coke shop | " | 34x72 |
| | Sand shed | " | 16x218 |
| | Platforms, bins &c | | |
| | Blacksmith shop | " | 20x40 |
| | Engine & boiler house | brick | 25x28 |
| | 24 stalls (Loco. shp.) | " | |
| | 50 ft. turntable. | | |
| | Store house "B" | frame | 44x244 |
| | " " "A" | " | 45x223 |
| | " " "C" | " | 30x105 |
| | Oil store house | " | 40x120 |
| | Chemical test room | " | 20x52 |
| | Addn | " | 14x18 |
| | General office building | brick | 100x132 |
| South Omaha | 5 M. 4676 ft. Side Tracks. | | |
| | Depot | frame | 24x84 |
| | Express office | " | 18x25 |
| | Yardmaster's office | " | 12x20 |
| | Track scales | | 62 ft. |
| | Stand pipe, water from city main | | |
| Albright | 1 M. 280 ft. Side Tracks. | | |
| | No buildings. | | |
| Averys | 3560 ft. Side Tracks. | | |
| | Depot | brick | 20x24 |
| Gilmore June | 737 ft. Side Tracks. | | |
| | Interlocking & Signaling station tower. | frame | 12x12 |
| | 16 levers. | | |
| Gilmore | 5116 ft. Side Tracks. | | |
| | Depot | frame | 24x70 |
| | Section house | " | 24x24 |
| | Addn | " | 12x16 |
| | Stock yards | | 48x56 |
| Papillion | 2 M. 260 ft. Side Tracks. | | |
| | Depot | frame | 24x44 |
| | Section house | " | 24x24 |
| | Stock yards | | 53x136 |
| Portal | 130 ft. Side Tracks. | | |
| | Platform | | 2888 sq. ft. |
| | Interlocking & Signal Plant. | | |
| Millard | 1 M. 1986 ft. Side Tracks. | | |
| | Depot | frame | 25x90 |
| | Section house | | 26x26 |
| | Stock yards | | 55x97 |
| | Pump house | " | 16x20 |
| | Tank, supply well. | | |
| Thurston | 2617 ft. Side Tracks. | | |
| | No buildings. | | |
| Ballast Spur | 2576 ft. Side Tracks. | | |
| | No buildings. | | |
| Elkhorn | 1 M. 2430 ft. Side Tracks. | | |
| | Depot | frame | 24x72 |
| | Section house | " | 24x24 |
| | Stock yards | | 62x100 |
| Waterloo | 5168 ft. Side Tracks. | | |

| | | | |
|---|---|---|---|
| | Depot | frame | 24x30 |
| | Stock yards | ..... | 63x74 |
| Primrose | 1611 ft. Side Tracks. | | |
| | No buildings. | | |
| Valley | 4 M. 1344 ft. Side Tracks. | | |
| | Depot | Stn & Brk | 27x123 |
| | Tenement house | frame | 24x45 |
| | Addn | " | 9x19 |
| | Section house | " | 24x24 |
| | Coal chute | " | 20 pockets |
| | Stock yards | ..... | 98x98 |
| Dorsey's Spur | 1584 ft. Side Tracks. | | |
| | Stock Yards | ..... | 67x134 |
| Mercer | 3303 ft. Side Tracks. | | |
| | Depot | frame | 22x45 |
| | Stock yards | ..... | 48x48 |
| Fremont | 3 M. 1378 ft. Side Tracks. | | |
| | Depot Pass | frame | 30x90 |
| | Depot Freight | " | 30x94 |
| | Section house | " | 24x24 |
| | " " | " | 16x28 |
| | Stock yards | ..... | 78x140 |
| | Stand pipe. | | |
| | Pump house. | | |
| | Tank supply well. | | |
| | Track scales | ..... | 36 ft. |
| Sanberg | 2585 ft. Side Tracks. | | |
| | No buildings. | | |
| Ames | 1 M. 1570 ft. Side Tracks. | | |
| | Depot | frame | 24x60 |
| | Section house | " | 16x24 |
| | Interlocking & Signal. plant. | | |
| North Bend | 1 M. 1522 ft. Side Tracks. | | |
| | Depot | frame | 24x70 |
| | Section house | " | 24x24 |
| | Stock yards | " | 90x128 |
| | Pump house | " | 12x20 |
| | Tank & wind mill &c. | | |
| | Water from well. | | |
| Bay State | 1554 ft. Side Tracks. | | |
| | No buildings. | | |
| Rogers | 1 M. 183 ft. Side Tracks. | | |
| | Depot | frame | 24x60 |
| | Section house | " | 26x26 |
| | Stock yards | ..... | 64x120 |
| Schuyler | 2 M. 4283 ft. Side Tracks. | | |
| | Depot | frame | 24x100 |
| | Section house | " | 24x24 |
| | " " | " | 24x24 |
| | Stock yards | ..... | 64x266 |
| | Tank, pump house &c. | | |
| | Water from well. | | |
| Lambert | 3633 ft. Side Tracks. | | |
| | No buildings. | | |
| Benton | 2882 ft. Side Tracks. | | |
| | Depot | frame | 20x40 |
| | Section house | " | 24x24 |
| | Stock yards | ..... | 64x180 |
| Warrack | 3033 ft. Side Tracks. | | |
| | No buildings. | | |
| Columbus | 5 M 3398 ft. Side Tracks | | |
| | Pass. depot | Stn & Brk. | 36x96 |

| | | | |
|---|---|---|---|
| | Freight depot | frame | 30x97 |
| | Lunch & dining room | " | 30x40 |
| | Stock yards | | 72x199 |
| | Track scales | | 8x44 |
| | Car repair shop | " | 12x24 |
| | Store house | " | 10x16 |
| | Master M. office | " | 9x29 |
| | Ice house | " | 25x80 |
| | Coal chute | | 36 pockets |
| | Bridge Watchman's hse | " | 24x24 |
| | 2 Stand pipes. | | |
| | Water from city. | | |
| Cayuga | 3021 ft Side Tracks. | | |
| | No buildings. | | |
| Duncan | 4537 ft. Side Tracks. | | |
| | Depot | frame | 25x90 |
| | Section house | " | 24x24 |
| | Stock yards | | 64x134 |
| Gardner | 3087 ft Side Tracks. | | |
| | Section house | " | 24x24 |
| Silver Creek | 5218 ft. Side Tracks | | |
| | Depot | frame | 24x40 |
| | Section house | " | 24x24 |
| | Tank, pump hse., wind mill, &c. Water from well. | | |
| | Stock yards | | 64x192 |
| Havens | 4676 ft. Side Tracks. | | |
| | Stock yards | | 48x100 |
| | Section house | | 24x24 |
| Clarks | 1 M. 1935 ft. Side Tracks. | | |
| | Depot | frame | 26x81 |
| | Tank, pump hse., wind mill, &c. Water from well. | | |
| | Stock yards | | 160x210 |
| Thummel | 5316 ft. Side Tracks. | | |
| | No buildings. | | |
| Sand Spur | 1224 ft. Side Tracks. | | |
| | No buildings. | | |
| Central City | 1 M. 3139 ft. Side Tracks. | | |
| | Depot | frame | 25x92 |
| | Section house | " | 24x24 |
| | Stock yards | | 64x192 |
| | " " | | 64x330 |
| | Tank, pump hse., wind mill, &c Water from well. | | |
| Paddock | 3310 ft. Side Tracks. | | |
| | Section house | frame | 24x24 |
| Chapman | 3300 ft. Side Tracks. | | |
| | Depot | | 25x90 |
| | Stock yards | | 64x128 |
| Lockwood | 2453 ft. Side Tracks | | |
| | Stock yards | | 64x128 |
| | Section house | | 24x24 |
| Grand Island | 19 M. 3981 ft. Side Tracks. | | |
| | Pass. Depot | Stn & Brk | 30x116 |
| | Coal house | frame | 18x41 |
| | Ice house | " | 12x16 |
| | Despatcher's office | " | 26x80 |
| | Freight house | " | 30x100 |
| | Ice house | " | 26x81 |
| | Track scales | | 42 ft. long |
| | Stock yards | | 57x136 |

| | | | |
|---|---|---|---|
| | Section house | frame | 24x24 |
| | Coal chute | ..... | 40 pockets |
| | Sand house | " | 20x40 |
| | Oil house | brick | 20x40 |
| | Office | frame | 18x32 |
| | Addn | frame | 12x16 |
| | Track scale at Sugar Wks | ..... | 42 ft. |
| | Stock yards | ..... | 215x242 |
| | Tank, &c. | | |
| | Water from city mains. | | |
| | Boiler house | frame | 16x30 |
| | Ice house | frame | 31x128 |
| | Interlocking & Signaling Plant. | | |
| | Machine shop | stone | 100x150 |
| | Addn | " | 50x50 |
| | Car shop | " | 165x230 |
| | Addn | brick | 14x14 |
| | Blacksmith shop | stone | 75x150 |
| | Paint shop | frame | 16x52 |
| | 25 stalls round house | Stn & Brk | |
| | 60 ft. turntable. | | |
| | Hotel | frame | 35x100 |
| | Addn | " | 35x51 |
| | Kitchen | " | 32x45 |
| | Ice house | " | 16x28 |
| | Coal house | " | 18x41 |
| Alda | 4501 ft. Side Tracks. | | |
| | Depot | frame | 20x40 |
| | Section house | " | 26x26 |
| | Stock yards | ..... | 64x104 |
| Sugar Beet Spur | 1100 ft. Side Tracks | | |
| | No buildings. | | |
| Wood River | 1 M. 1025 ft. Side Tracks. | | |
| | Depot | frame | 24x70 |
| | Tank, & Wind Mill, Pump house, &c. Water from well. | | |
| | Stock yards | ..... | 64x222 |
| Sheldon | 1 M. 37 ft. Side Tracks. | | |
| | Depot | frame | 24x60 |
| | Section house | " | 24x24 |
| | Stock yards | ..... | 64x256 |
| Gibbon | 1 M. 1503 ft. Side Tracks. | | |
| | Depot | frame | 25x80 |
| | Section house | " | 24x24 |
| | Stock yards | ..... | 64x296 |
| | Tank & Wind Mill. Water from well. | | |
| Buda | 3706 ft. Side Tracks | | |
| | Depot | frame | 30x70 |
| | Section house | " | 24x24 |
| | Stock yards | ..... | 64x128 |
| Kearney | 3 M 3280 ft. Side Tracks. | | |
| | Depot | Stn & Brk | 28x116 |
| | Freight depot | frame | 30x100 |
| | Section house | frame | 24x24 |
| | Tank, & wind mill. Water from well. | | |
| | Stock yards | ..... | 116x212 |
| | Track scales | ..... | 36 ft. |
| | Car repair house | " | 14x20 |
| West Kearney | 1 M. 2979 ft. Side Tracks. | | |
| | Depot | brick. | 22x50 |
| Stevenson | 3021 ft. Side Tracks. | | |
| | Section house | frame | 24x24 |
| | Stock yards | ..... | 64x116 |

| | | | |
|---|---|---|---|
| dowa | 2554 ft. Side Tracks. | | |
| | Depot | frame | 12x28 |
| | Stock yards | | 64x128 |
| lm Creek | 4199 ft. Side Tracks. | | |
| | Depot | frame | 24x64 |
| | Stock yards | | 64x194 |
| | Tank & wind mill. | | |
| | Water from well. | | |
| Simonds | 2462 ft. Side Tracks. | | |
| | No buildings. | | |
| Overton | 3553 ft. Side Tracks. | | |
| | Depot | frame | 20x52 |
| | Section house | " | 24x24 |
| | " " | " | 24x24 |
| | Stock yards | | 115x138 |
| Joselyn | 3480 ft. Side Tracks. | | |
| | Section house | | 24x24 |
| Lexington | 1 M. 4881 ft. Side Tracks. | | |
| | Depot | frame | 25x90 |
| | Section house | " | 24x24 |
| | Stock yards | | 128x128 |
| | Coal chute | | 20 Pockets |
| | Tank, pump house, &c. | | |
| | Water from well. | | |
| Markel | 3027 ft. Side Tracks. | | |
| | No buildings. | | |
| Cayote | 3362 ft. Side Tracks. | | |
| | Section house | frame | 24x24 |
| Conad | 1 M. 243 ft. Side Tracks | " | 24x66 |
| | Depot | " | 24x24 |
| | Section house | | 64x128 |
| | Stock yards | | |
| Willow Island | 3374 ft. Side Tracks. | " | 24x24 |
| | Section house | | 64x128 |
| | Stock yards | | |
| | Tank & Wind Mill, &c. | | |
| | Water from well. | | |
| Gothenburg | 1 M. 3825 ft. Side Tracks. | " | 20x40 |
| | Depot | | 64x128 |
| | Stock yards | | |
| Vroman | 2553 ft. Side Tracks. | " | 26x26 |
| | Section house | | |
| Brady Island | 4816 ft. Side Tracks. | " | 24x40 |
| | Depot | " | 24x24 |
| | Section house | | 137x175 |
| | Stock yards | | |
| | Tank, wind mill, pump house, &c. | | |
| | Water from well. | | |
| Hindrey | 2962 ft. Side Tracks. | | |
| | No buildings. | | |
| Maxwell | 3727 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x26 |
| | Stock yards | | 84x128 |
| Gannet | 3392 ft. Side Tracks. | " | 24x24 |
| | Section house | " | 24x26 |
| | Watchman's house | | |
| North Platte | 10 M. 5226 ft. Side Tracks. | " | (in hotel.) |
| | Pass. depot (see below) | " | 24x24 |
| | Section house | " | 12x16 |
| | Addn | | 32 pockets |
| | Coal chute | | 45 ft. |
| | Track scales | | |

| | | | |
|---|---|---|---|
| | Ice house | frame | 31x128 |
| | Asst. Supt. Office | " | 32x40 |
| | Sand house | " | 14x20 |
| | Sand bin | " | 25x56 |
| | Oil house | Stn & Brk | 19x28 |
| | Tank, &c. | | |
| | Water from well. | | |
| | Coal house | frame | 13x38 |
| | B. & B. Office & Carp. shop | " | 18x32 |
| | B. & B. Store room | " | 12x16 |
| | Ice house | " | 24x100 |
| | Freight house | " | 30x100 |
| | Section house | " | 26x26 |
| | Car rep & coal storage | " | 16x62 |
| | Ice house | " | 37x177 |
| | Machine shop | brick | 100x152 |
| | Boiler shop | frame | 50x125 |
| | Engine & boiler house | " | 34x44 |
| | Iron Supply house | " | 24x30 |
| | Store house | brick | 37x57 |
| | Blacksmith shop | " | 75x101 |
| | Addn | " | 22x30 |
| | M. P. & C. offices | frame | 20x40 |
| | Round house—25 stalls | brick | |
| | Turntable | | 60 ft. |
| | Pass. depot & hotel | frame | 35x135 |
| | Addn | " | 36x73 |
| | Laundry | " | 20x48 |
| | Refrigerator | " | 12x14 |
| | Stable | " | 14x20 |
| | Coal house | | 16x30 |
| Pallas | 4014 ft. Side Tracks | | |
| | No buildings. | | |
| Spuds | 799 ft. Side Tracks. | | |
| | No build ngs. | | |
| Nichols | 3011 ft. Side Tracks. | | |
| | Section house | frame | 26x26 |
| Hershey | 4216 ft. Side Tracks. | | |
| | Depot | " | 22x50 |
| | Stock yards | | 64x70 |
| | Tank, wind mill, &c. | | |
| | Water from well. | | |
| | Section house | " | 26x26 |
| Sutherland | 4148 ft. Side Tracks. | | |
| | Depot | " | 22x50 |
| | Stock yards | | 64x128 |
| Dexter | 3469 ft. Side Tracks. | | |
| | No buidlings. | | |
| Paxton | 4898 ft. Side Tracks. | | |
| | Depot | frame | 24x48 |
| | Stock yards | | 64x128 |
| | Tank, wind mill, pump hse., &c. | | |
| | Water from well. | | |
| Korty | 3427 ft. Side Tracks. | | |
| | No buildings | | |
| Roscoe | 2989 ft. Side Tracks. | | |
| | Section house | frame | 26x26 |
| Ogallala | 1 M. 2023 ft. Side Tracks. | | |
| | Depot | " | 24x70 |
| | Section house | " | 26x26 |
| | Bunk house | " | 15x30 |
| | Stock yards | | 144x144 |
| | Tank, wind mill, p'mp hse. &c. | | |

| | | | |
|---|---|---|---|
| ano | 3309 ft. Side Tracks. | | |
| | No buildings. | | |
| ule | 3071 ft. Side Tracks. | | |
| | Section house | frame | 26x26 |
| vier | 3456 ft. Side Tracks. | | |
| | No buildings. | | |
| g Springs | 4532 ft. Side Tracks. | | |
| | Depot | " | 24x48 |
| | Section house | " | 24x24 |
| | Stock yards | | 64x128 |
| | Tank & wind mill, &c. | | |
| | Water from well. | | |
| | Bunk house | frame | 16x31 |
| | " " | " | 14x24 |
| | 2780 ft. Side Tracks. | | |
| Barton | No buildings. | | |
| Julesburg | 3 M. 983 ft. Side Tracks. | | |
| | Depot | " | 24x90 |
| | Tank, pmp hse., wind mill, &c. | | |
| | Water from well | " | 28 pockets |
| | Coal chute | " | 20x30 |
| | Tenement house | " | 12x14 |
| | Addn | " | 26x26 |
| | Section house | " | 18x24 |
| | Addn | " | 15x17 |
| | Bunk house | " | 14x42 |
| | " " | " | 16x44 |
| | Stable | " | |
| | Round house—2 stalls | | |
| Wier | 3483 ft. Side Tracks. | " | 24x24 |
| | Section house | | |
| Ralton | 3340 ft Side Tracks. | | |
| | No buildings. | | |
| Chappell | 3181 ft. Side Tracks. | " | 24x60 |
| | Depot | " | 26x26 |
| | Section house | | 64x80 |
| | Stock yards | | |
| | Tank, wind mill, &c. | | |
| | Water from well. | | |
| Perdu | 3448 ft. Side Tracks. | | |
| | No buildings. | | |
| Lodge Pole | 4302 ft. Side Tracks. | " | 24x75 |
| | Depot | " | 26x26 |
| | Section house | | 64x182 |
| | Stock yards | | |
| | Tank wind mill, pmp. hse., &c. | | |
| | Water from we l. | | |
| Sunol | 3335 ft. Side Tracks. | | |
| | No buildings. | | |
| Colton | 2857 ft. Side Tracks. | | |
| | Section house | " | 24x24 |
| Sidney | 4 M. 3790 ft. Side Tracks. | | |
| | Pass. depot | stone | 330x100 |
| | Tel. office | frame | 24x48 |
| | M. P. & C. office | " | 14x20 |
| | Sand house | " | 14x20 |
| | Sand bin | " | 24x32 |
| | Tank, pump house, &c. | | |
| | Water from well. | | |
| | Stock yards | | 110x114 |
| | Section house | frame | 26x26 |
| | Car repairer's hse | " | 18x30 |
| | Addn | " | 14x24 |

| | | | |
|---|---|---|---|
| | Freight house | frame | 30x33 |
| | Coal chute | | 24 pockets |
| | Car repairer's hse | " | 14x26 |
| | Ice house | " | 31x108 |
| | Section house | " | 24x32 |
| | Oil house | | 16x62 |
| | Bunk house | frame | 12x36 |
| | Round house—10 stalls | brick | |
| | Turntable | | 54 ft. |
| | Hotel | frame | 28x94 |
| | Addn | " | 28x44 |
| | Laundry | | 25x50 |
| | Wood house | " | 16x40 |
| | Refrigerator | | 12x14 |
| Margate | 3376 ft. Side Tracks. | | |
| | No buildings. | | |
| Brownson | 2637 ft. Side Tracks. | | |
| | Section house | frame | 16x28 |
| | Addn | " | 12x16 |
| Herdon | 3452 ft. Side Tracks. | | |
| | No buildings. | | |
| Potter | 4159 ft. Side Tracks. | | |
| | Depot | frame | 20x44 |
| | Section house | " | 26x26 |
| | Stock Yards | | 64x80 |
| | Tank, wind mill, &c. | | |
| | Water from well. | | |
| Jacinto | 3457 ft. Side Tracks. | | |
| | No Buildings. | | |
| Dix | 3262 ft. Side Tracks. | | |
| | Section house | frame | 27x28 |
| Owasco | 3462 ft. Side Tracks. | | |
| | No. buildings. | | |
| Kimball | 4009 ft. Side Tracks. | | |
| | Depot | frame | 24x75 |
| | Section house | " | 27x27 |
| | Stock yards | | (86x112 |
| | | | (65x128 |
| | Tank, pump hse., &c. | | |
| | Water from creek. | | |
| Adams | 2512 ft. Side Tracks. | | |
| | No buildings. | | |
| Bushnell | 2863 ft. Side Tracks | | |
| | Section house | frame | 24x26 |
| | Addn | " | 18x18 |
| | Tank, wind mill, &c. | | |
| Tioga | 3417 ft. Side Tracks. | | |
| | No buildings. | | |
| Pine Bluffs | 3234 ft. Side Tracks. | | |
| | Depot | frame | 24x48 |
| | Section house | " | 27x27 |
| | Stock yards | | 175x192 |
| | Tank, wind mill, &c. | | |
| | Water from well. | | |
| | Coal chute 6 pockets. | | |
| Tracy | 2490 ft. Side Tracks. | | |
| | No buildings. | | |
| Egbert | 3130 ft. Side Tracks. | | |
| | Depot | frame | 16x36 |
| | Section house | " | 24x24 |
| | Tank, wind mill, &c. | | |
| | Water from well. | | |
| Burns | 2412 ft. Side Tracks. | | |

| | | | |
|---|---|---|---|
| | No buildings. | | |
| Idedale | 1 M. 39 ft. Side Tracks | | |
| | Depot | frame | 24x48 |
| | Section house | " | 24x27 |
| | Stock yards | | 43x86 |
| | Tank, pump house, &c. | | |
| | Water from well. | | |
| tkins | 2705 ft. Side Tracks. | | |
| | Section house | frame | 25x40 |
| | Tank, pump house, &c. | | |
| | Water from well. | | |
| Archer | 1 M. 463 ft. Side Tracks. | | |
| | Depot | " | 16x48 |
| | Section house | " | 28x32 |
| | Stock yards | | 49x52 |
| East Cheyenne | 592 ft. Side Tracks. | | |
| Cheyenne | 22 M. 1245 ft. Side Tracks. | | |
| | Pass. Depot | stone | 54x220 |
| | Freight depot | frame | 35x156 |
| | Coal chute | " | 48 pockets |
| | Sand house | brick | 23x30 |
| | Sand bin | frame | 30x30 |
| | Tank, pipe line, &c. | | |
| | Water from city main. | | 34 ft. |
| | Track scales | frame | 16x26 |
| | Store house | " | 24x96 |
| | " " | " | 24x100 |
| | Ice house | " | 30x120 |
| | " " | " | 18x40 |
| | Tenement house | " | 12x12 |
| | Addn | " | 10x12 |
| | Addn | " | 21x25 |
| | Tenement house | " | 10x15 |
| | Addn | " | 10x18 |
| | Addn | " | 17x32 |
| | Tenement house | " | 10x24 |
| | Addn | " | 18x38 |
| | Tenement house | " | 6x19 |
| | Addn | " | 11x12 |
| | Addn | " | 24x24 |
| | Section house | " | 10x13 |
| | Addn | " | 17x26 |
| | Section house | " | 23x26 |
| | Addn | " | 10x14 |
| | Bunk house | " | 16x20 |
| | Stable | " | 16x20 |
| | Yardmaster's office | " | 208000 sq.ft. |
| | Stock yards | | |
| | (About 1-3 of which belongs to the U. P. Ry. Co.) | | |
| | Oil house | St.&B | 27x38 |
| | Machine shop | brieb. | 125x222 |
| | Addn | " | 50x133 |
| | Boiler shop | stone | 104x152 |
| | Addn | " | 46x46 |
| | Copper & Tin shop | " | 53x76 |
| | Transfer stable | iron | 60x283 |
| | Blacksmith shop | brick | 80x262 |
| | Addn | " | 20x28 |
| | Paint shop | brick | 150x191 |
| | Addn | " | 30x60 |
| | Addn | " | 12x18 |
| | Transfer table | steel | 60x298 |

| | | | |
|---|---|---|---|
| | Car erecting shop | brick | 96x173 |
| | Wood working shop | " | 80x200 |
| | Addn | " | 50x80 |
| | Coal bin | frame | 22x35 |
| | Lavatory | brick | 20x20 |
| | Lumber dryer | frame | 18x77 |
| | Ice house | " | 30x40 |
| | Car repair shop | brick | 72x202 |
| | M. M. Office | " | 45x80 |
| | Store house | frame | 12x34 |
| | Hose house | " | 22x30 |
| | Turntable at rep. shop. | | |
| | Iron racks, scrap sheds, &c. | | |
| | Electric Light plant. | | |
| | Steam heating plant. | | |
| | Water and sewerage systems | | |
| | Round house—20 stalls | stone | |
| | " " —10 " | brick | |
| | Turntable | iron | 60 ft. |
| Corlett | 4333 ft. Side Tracks. | | |
| | Depot | frame | 24x44 |
| | Section house | " | 26x26 |
| | Tenement house | " | 14x20 |
| | Tank, pump house, pump, &c. | | |
| | Water from spring. | | |
| Borie | 3615 ft. Side Tracks. | | |
| | Section house | frame | 26x26 |
| Otto | 3814 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| | Stand pipe. | | |
| | Tank, pump house, pump, &c. | | |
| | Water from spring. | | |
| Granite Canon | 4025 ft. Side Tracks. | | |
| | Depot | frame | 24x48 |
| | Section house | " | 26x26 |
| | Bunk house | " | 12x32 |
| | Stand pipe. | | |
| | Tank, pump hse., pump, &c. | | |
| | Water from spring. | | |
| Buford | 4158 ft. Side Tracks. | | |
| | Depot | frame | 16x18 |
| | Section house | " | 24x24 |
| | Tank, pump hse., pump, &c. | | |
| | Water from spring. | | |
| Ballast Siding | 1 M. 3643 ft. Side Tracks. | | |
| | No buildings. | | |
| Sherman | 1 M. 3917 ft. Side Tracks. | | |
| | Depot | frame | 24x30 |
| | Section house | " | 16x36 |
| | Tank, pump hse., pump, &c. | | |
| | Water from spring. | | |
| Dale Creek | Tenement house | frame | 16x24 |
| | Tank, pump hse., pump, &c. | | |
| | Water from creek. | | |
| Tie Siding | 1 M. 529 ft. Side Tracks .. | | |
| | Depot | frame | 20x44 |
| | Section house | " | 24x24 |
| Harney | 3410 ft. Side Tracks. | | |
| | No buildings. | | |
| Red Buttes | 1 M. 5027 ft. Side Tracks. | | |
| | Depot | frame | 24x30 |
| | Section house | " | 26x26 |
| | Bunk house | " | 20x40 |

| | | |
|---|---|---|
| Oil house | frame | 12x16 |
| Sand house | " | 12x16 |
| Water column. | | |
| Tank, pump hse., &c. | | |
| Water from creek. | | |
| Round house—2 stalls | frame | |
| 4096 ft. Side Tracks. | | |
| Section house | ..... | 24x36 |
| 13 M. 2110 ft. Side Tracks. | | |
| Freight depot | frame | 30x104 |
| Sand house | " | 12x30 |
| Sand bin | " | 14x100 |
| Tank, pipe line, &c. | | |
| Water from spr'g by gravity. | | |
| Blacksmith shop | stone | 76x102 |
| Machine shop | " | 76x126 |
| Addn | " | 32x40 |
| Iron supply house | " | 35x45 |
| Supply house | frame | 30x52 |
| Coal bin | " | 22x55 |
| Store house | " | 16x16 |
| Paint house | stone | 29x40 |
| Addn | frame | 12x16 |
| Car rep. shop | " | 29x147 |
| Addn | " | 14x27 |
| Addn | " | 9x63 |
| Store house | " | 18x20 |
| M. M. office | " | 20x40 |
| Car rep. oil house | " | 18x80 |
| Round house—20 stalls | stone | |
| Turntable | iron | 60 ft. |
| Hotel | frame | 36x176 |
| Addn | " | 22x22 |
| Laundry | " | 30x30 |
| Coal house | " | 10x65 |
| Stable | " | 10x19 |
| Shed | " | 13x46 |
| Oil house | stone | 20x28 |
| Supt's office | frame | 31x38 |
| Coal chute | ..... | 60 pockets |
| Coal bins & platforms | frame | 16x18 |
| Yardmaster's office | " | 26x60 |
| Ice house | ..... | 42 ft. |
| Track scales | ..... | 102000 sq f. |
| Stock yards | ..... | 21000 sq. ft |
| Stock yards | frame | 15x52 |
| Stable | " | 20x20 |
| " | " | 20 ft. diam. |
| Battery House | ..... | 20x52 |
| Express & baggage room | frame | 18x24 |
| Addn | " | 16x18 |
| Addn | " | 24x32 |
| Tenement house | " | 8x13 |
| Addn | " | 15x20 |
| Addn | " | 10x15 |
| Addn | " | 17x24 |
| Stable | " | 18x24 |
| Tenement house | " | 16x24 |
| Addn | " | 28x32 |
| Tenement house | " | 14x22 |
| Addn | " | 12x15 |
| Addn | " | 24x24 |
| Tenement house | | |

| | | | |
|---|---|---|---|
| | Tenement house | frame | 14x24 |
| | Addn | " | 14x17 |
| | Tenement house | " | 28x36 |
| | " " | " | 20x48 |
| | Addn | " | 14x15 |
| | Tenement house | " | 16x38 |
| | " " | " | 16x28 |
| | " " | " | 18x30 |
| | " " | concr. | 22x30 |
| | " " | frame | 26x26 |
| | " " | " | 18x24 |
| | Addn | " | 16x18 |
| | Tenement house | brick | 20x24 |
| | Addn | frame | 16x18 |
| | Section house | " | 18x35 |
| | Addn | " | 10x16 |
| | **Laramie Soda Works.** | | |
| | Boiler & Pump hse | frame | 25x40 |
| | Addn | " | 9x9 |
| | Tank & tower | | |
| | Lixiviating house | " | 22x24 |
| | Causticiser | " | 20x22 |
| | Addn | " | 18x68 |
| | Addn | " | 9x26 |
| | Addn | " | 28x22 |
| | Dry house | " | 52x91 |
| | Superintendent's house | " | 12x20 |
| | Mixing room | " | 25x36 |
| | Bunk house | " | 14x37 |
| | Lye house | " | 16x40 |
| | Laboratory | " | 15x20 |
| | Revolver house | " | 56x84 |
| | Black ball house | " | 25x40 |
| | Furnace house | " | 44x217 |
| | Addn | " | 7x21 |
| | Addn | " | 21x53 |
| | Tub room | " | 27x44 |
| | Addn | " | 10x18 |
| | **Laramie Rolling Mills.** | | |
| | Main building | stone | 115x235 |
| | Hot bed | frame | 60x83 |
| | Blacksmith shop | brick | 22x40 |
| | Boiler shed | frame | 26x48 |
| | Machine shop | stone | 35x58 |
| | Furnace shed | " | 47x68 |
| | Office | frame | 15x29 |
| | Rail shed | " | 33x38 |
| | Carpenter shop | " | 21x45 |
| | Store house | " | 49x1000 |
| | Engine house | " | 18x25 |
| Howells | 2597 ft. Side Tracks. | | |
| | Section house | frame | 26x26 |
| Wyoming | 1 M. 909 ft. Side Tracks. | | |
| | Depot | " | 24x48 |
| | Section house | " | 26x26 |
| | Tank, pump hse., &c. | | |
| | Water from river. | | |
| Huttons | 4184 ft. Side Tracks. | | |
| | Depot | " | 12x20 |

| | | | |
|---|---|---|---|
| | Section house | frame | 26x26 |
| | Stock yards | ..... | 119x204 |
| ooper Lake | 3553 ft. Side Tracks. | " | 26x26 |
| | Section house | " | 16x16 |
| | Tenement house | log. | 28x32 |
| | Addn | " | 12x32 |
| | Stable | ..... | 40x65 |
| | Corral | | |
| | Tank, pump hse., &c. | | |
| | Water from river. | | |
| Lookout | 1 M. 1532 ft. Side Tracks. | frame | 24x50 |
| | Depot | " | 17x34 |
| | Section house | | |
| Harpers | 3663 ft. Side Tracks. | " | 12x20 |
| | Depot | " | 16x28 |
| | Section house | " | 13x16 |
| | Addn | | |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| Miser | 3398 ft. Side Tracks. | " | 24x26 |
| | Section house | | |
| Rock Creek | 1 M. 3848 ft. Side Tracks. | " | 24x74 |
| | Depot | " | 26x26 |
| | Section house | " | 26x28 |
| | Tenement house | " | 204x240 |
| | Stock yards | | |
| | Tank, pump hse., &c. | | |
| | Water from Creek. | | |
| Wilcox | 2564 ft. Side Tracks. | " | 26x26 |
| | Section house | | |
| Aurora | 3255 ft. Side Tracks. | " | 24x50 |
| | Depot | " | 26x26 |
| | Section house | | |
| | Tank, pump hse., &c. | | |
| | Water from spring. | | |
| Tie Track No. 2 | 1456 ft. Side Tracks. | | |
| | No buildings. | | 20x60 |
| Medicine Bow | 4 M. 3734 ft. Side Tracks. | " | |
| | Depot | frame | 26x26 |
| | Section house | " | 16x18 |
| | Tenement house | " | 20x22 |
| | " " | " | 16x43 |
| | Addn | " | 15x24 |
| | Tenement house | ..... | 32 pockets |
| | Coal chute | ..... | 100500 sq.ft. |
| | Stock yards | | |
| | Tank, pump hse., &c. | | |
| | Water from creek. | " | 14x18 |
| | Sand house | stone | |
| | Round house—5 stalls | | |
| Allen | 5120 ft. Side Tracks. | frame | 24x60 |
| | Depot | " | 20x50 |
| | Section house | " | 11x21 |
| | Stable | | |
| Pyncheon | 2931 ft. Side Tracks. | " | 26x26 |
| | Section house | | |
| Carbon | 6 M. 430 ft. Side Tracks. | " | 24x70 |
| | Depot | " | 16x28 |
| | Section house | " | 12x16 |
| | Addn | " | 16x24 |
| | Tenement house | " | 16x18 |
| | Addn | " | 18x30 |
| | Pump Repairer's hse | | |

| | | | |
|---|---|---|---|
| | Tank—Water from Rattlesnake Creek W. Co. | | |
| Simpson | 1 M. 212 ft. Side Tracks. | | |
| | Telegraph Office | frame | 14x16 |
| | Addn | " | 10x14 |
| | Section house | " | 26x26 |
| Percy | 3652 ft. Side Tracks. | | |
| | Bunk house | " | 16x32 |
| | Section house | " | 26x26 |
| Weed | 1768 ft. Side Tracks. | | |
| | Tank—Water from Rattlesnake Creek W. Co. | | |
| Dana | 5057 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 28x36 |
| | Tank—Water from R. S. Creek W. Co. | | |
| Edson | 2595 ft. Side Tracks. | | |
| | Section house | " | 24x32 |
| Mile 166 | | | |
| | Watchman's house | " | 11x13 |
| Walcott | 3940 ft. Side Tracks. | | |
| | Section house | " | 20x36 |
| | Addn | " | 12x18 |
| | Stock yards | | 57x64 |
| Ft. Steele | 1 M. 3277 ft. Side Tracks. | | |
| | Depot | " | 24x50 |
| | Section house | " | 26x26 |
| | Tenement house | " | 24x24 |
| | Tank, pump hse., &c. | | |
| | Water from River. | | |
| | Round house—2 stalls | frame | |
| Greenville | 3393 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| Rawlins | 9 M. 2917 ft. Side Tracks. | | |
| | Pass. depot | frame | 24x87 |
| | Freight house | " | 30x100 |
| | Addn | " | 30x60 |
| | Oil house | " | 10x15 |
| | Coal chute | " | 60 pockets |
| | Coal house | " | 30x162 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| | Yardmaster's office | | 14x18 |
| | Oil house | stone | 20x29 |
| | Wool house | frame | 25x70 |
| | Track Scales | | 34 feet |
| | Stock yards | | 47300 sq.ft. |
| | Bunk house | " | 14x20 |
| | Tenement house | " | 16x42 |
| | Addn | " | 17x18 |
| | Tenement house | " | 16x27 |
| | " " | " | 24x24 |
| | Addn | " | 14x38 |
| | Tenement house | " | 16x32 |
| | Addn | " | 13x14 |
| | Tenement house | " | 16x26 |
| | Addn | " | 16x24 |
| | Tenement house | " | 22x37 |
| | Addn | " | 18x24 |
| | Section house | " | 26x26 |
| | Machine shop | stone | 76x80 |
| | Addn | " | 31x36 |
| | Hose house | frame | 12x16 |

| | | | |
|---|---|---|---|
| | Stone house | frame | 30x75 |
| | M. M. Office & Son | " | 30x70 |
| | Carpenter shop | " | 16x52 |
| | " " | " | 30x100 |
| | Office | " | 16x45 |
| | Store house | " | 27x47 |
| | Oil & Ice house | " | 20x65 |
| | Round house—20 stalls | frame | |
| | Turntable | iron | 60 feet. |
| | Hotel | frame | 35x67 |
| | Addn | " | 28x44 |
| | 2871 ft. Side Tracks. | | |
| | Depot | frame | 20x36 |
| | Addn | " | 12x18 |
| | Section house | " | 26x26 |
| | Addn | " | 13x18 |
| | 300 ft. Side Tracks. | | |
| | No buildings. | | |
| | 3614 ft. Side Tracks. | | |
| | Section house | frame | 20x36 |
| | Addn | " | 12x18 |
| | 3880 ft. Side Tracks. | | |
| | Telegraph office | " | |
| | Section house | " | 26x26 |
| | Tenement house | " | 20x24 |
| | Chinese Sec. house | " | 14x28 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| | 3680 ft. Side Tracks. | | |
| | Depot | frame | 24x30 |
| | Section house | " | 26x26 |
| | " " Chinese | " | 12x26 |
| | 3799 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| | " " Chinese | " | 14x30 |
| | 2 M. 2889 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x26 |
| | Tenement house | " | 26x26 |
| | Coal chute | " | 20 pockets. |
| | Bunk house | " | 16x40 |
| | Tank, pump house. | | |
| | Water from well. | | |
| | Round house—2 stalls | " | |
| | 3319 ft. Side Tracks. | | |
| | No buildings. | | |
| | 3650 ft. Side Tracks. | | |
| | Coal house | frame | 30x100 |
| | Section house | " | 20x26 |
| | Addn | " | 10x16 |
| | Section house, Chinese | " | 14x20 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| | 1 M. 1743 ft. Side Tracks. | | |
| | Depot | frame | 16x22 |
| | Addn | " | 9x12 |
| | Section house | " | 16x32 |
| | Addn | " | 16x16 |
| | Section house, Chinese | " | 12x26 |
| | 3679 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| | 3521 ft. Side Tracks. | | |
| | No buildings. | | |

...on
...Neill
...ner
...lmore
...reston
...Latham
...Wamsutter
...Frewen
...Red Desert
...Tipton
...Table Rock
...Monell

| | | | |
|---|---|---|---|
| Bitter Creek | 1 M. 4275 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x26 |
| | Stock yards | | 130x320 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| Patrick | 3307 ft. Side Tracks. | | |
| | No buildings. | | |
| Black Buttes | 3647 ft. Side Tracks. | | |
| | Telegraph Office | frame | 12x26 |
| | Section house | " | 26x26 |
| Hallville | 4035 ft. Side Tracks. | | |
| | Section house | " | 22x33 |
| | Addn | " | 12x16 |
| | Section house Chinese | " | 14x26 |
| Point of Rocks | 4637 ft. Side Tracks. | | |
| | Depot | frame | 24x70 |
| | Section house | " | 26x26 |
| | Powder hse | dugo't | 14x16 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| Thayer | 3910 ft. Side Tracks. | | |
| | Section house | frame | 26x26 |
| Salt wells | 3823 ft. Side Track. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x26 |
| Baxter | 3639 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| | " " Chinese | " | 12x25 |
| Vandyke | 5069 ft. Side Tracks. | | |
| | No buildings. | | |
| Rock Springs | 25 M. 260 ft. Side Tracks. | | |
| | Depot | " | 24x111 |
| | Section house | " | 26x26 |
| | " " | " | 26x26 |
| | " " Chinese | " | 12x25 |
| | Tenement house | " | 16x24 |
| | Addn | " | 23x26 |
| | Express Office | " | 16x24 |
| | Bunk house | " | 16x20 |
| | Car Rep. Shop | " | 13x15 |
| | Coal chute | | 10 pockets |
| | Sand shed | " | 12x30 |
| | Oil house | " | 21x27 |
| | Track scales | | 29 ft. |
| | " " | | 42 ft. |
| | Stock yards | | 46x48 |
| | Tank and stand pipe. | | |
| | Water from Gr. R. W. Co. | | |
| | Round house—4 stalls | frame | |
| Blairtown | 1 M. 3031 ft. Side Tracks. | | |
| | No buildings. | | |
| Sweetwater Mine | 4 M. 3739 ft. Side Tracks. | | |
| | No buildings. | | |
| Wilkins | 4969 ft. Side Tracks. | | |
| | Telegraph office | frame | 14x30 |
| | Section house | " | 26x26 |
| Green River | 10 M. 4397 ft. Side Tracks. | | |
| | Pass. Depot | frame | 24x50 |
| | Freight Depot | " | 30x80 |
| | Dispatcher's office | " | 20x30 |
| | Oil house | " | 16x48 |
| | Track scales | " | 48 ft. |

| | | | |
|---|---|---|---|
| | Hose house | frame | 10x16 |
| | Tank, Water from Gr. R. W. Wks. Co. | " | 32 pockets |
| | Coal chute | " | 31x101 |
| | Ice house | " | 16x24 |
| | Carpenter shop | " | 31x71 |
| | Sand house | " | 74400 sq. ft. |
| | Stock yards | " | 30x60 |
| | Ice house | " | 12x30 |
| | Coal house | " | 16x24 |
| | Bunk house | " | 18x24 |
| | Tenement house | " | 14x18 |
| | Addn | " | 18x24 |
| | Tenement house | " | 14x18 |
| | Addn | " | 18x24 |
| | Tenement house | " | 14x18 |
| | Addn | " | 18x24 |
| | Tenement house | " | 14x18 |
| | Addn | " | 18x24 |
| | Tenement house | " | 14x18 |
| | Addn | " | 20x24 |
| | Tenement house | " | 14x18 |
| | Addn | " | 20x24 |
| | Tenement house | " | 11x16 |
| | Addn | " | 20x24 |
| | Tenement house | " | 11x16 |
| | Addn | " | 26x26 |
| | Section house | " | 26x26 |
| | " " | " | 40x70 |
| | Machine shop | " | 38x44 |
| | Blacksmith shop | " | 35x145 |
| | Car repair shop | " | 10x16 |
| | Paint house | " | 16x86 |
| | M. M. office | " | 26x34 |
| | Boiler house | " | 9x20 |
| | Store house | " | 10x16 |
| | Oil house | brick. | |
| | Round house—10 stalls | stone. | |
| | " " —15 stalls | iron | 60 ft. |
| | Turntable | frame | 32x80 |
| | Hotel | " | 34x78 |
| | Addn | " | 16x46 |
| | Addn | " | 20x44 |
| | Servant's house | " | 12x24 |
| | Chinese house | " | 12x12 |
| | Refrigerator | " | 13x31 |
| | Stable | | |
| Peru | 5189 ft. Side Tracks. | " | 16x20 |
| | Depots | " | 26x26 |
| | Section house | " | 13x17 |
| | Bunk house | | |
| Bryan | 1 M. 1076 ft. Side Tracks. | " | 24x50 |
| | Depot | " | 26x26 |
| | Section house | | |
| Bryan Tank | No Side Track | | |
| | Tank, pump house &c. | | |
| | Water from creek. | | |
| Marston | 2843 ft. Side Tracks. | frame | 16x21 |
| | Depot | " | 8x12 |
| | Addn | " | 17x24 |
| | Section house | " | 20x40 |
| | Bunk house | | |
| Tie Tracks No 4 | 2747 ft. Side Tracks. | | |
| | No buildings | | |

| | | | |
|---|---|---|---|
| Granger | 4573 ft. Side Tracks. | | |
| | Depot (½ interest) | frame | 20x36 |
| | Section house | " | 20x36 |
| | Addn | " | 12x18 |
| | Bunk house | " | 16x28 |
| | Tank house | " | 16x36 |
| | Tank, pump house, &c. | | |
| | Water from creek. | | |
| | Tenement house | " | 12x24 |
| Church Buttes | 3622 ft. Side Tracks. | | |
| | Section house | frame | 20x36 |
| | Addn | " | 12x18 |
| | Tank, pump house, &c. | | |
| | Water from creek. | | |
| Hampton | 2374 ft. Side Tracks. | | |
| | Section house | " | 18x24 |
| | Section house Chinese | " | 16x21 |
| Carter | 3501 ft. Side Tracks. | | |
| | Depot | " | 24x100 |
| | Section house | " | 26x26 |
| | Stock yards | | 84x96 |
| | Bunk house | " | 12x20 |
| Bridger | 4634 ft. Side Tracks. | | |
| | Depot | " | 24x50 |
| | Tank pump house, &c. | | |
| | Water from creek. | | |
| Leroy | 1510 ft. Side Tracks. | | |
| | Section house | " | 18x24 |
| | " " Chinese | " | 17x21 |
| Piedmont | 1 M. 777 ft. Side Tracks. | | |
| | Depot | " | 24x50 |
| | Section house | " | 26x26 |
| | " " | " | 26x26 |
| | Tenement house—2 stalls | " | 20x23 |
| | Round house—2 stalls | frame | |
| | Bunk house | jrame | 16x18 |
| | Coal house | " | 30x120 |
| | Tank, pump house, &c | | |
| | Water from well. | | |
| Tapioca | 1896 ft. Side Tracks. | | |
| | Watchman's house | frame | 16x23 |
| Aspen | 3418 ft. Side Tracks. | | |
| | Depot | " | 20x44 |
| | Section house | " | 20x24 |
| | Bunk house | " | 10x12 |
| | Section house, Chinese | " | 14x22 |
| | Tank, pump house, &c | | |
| | Water from well. | | |
| Hilliard | 3621 ft. Side Tracks. | | |
| | Depot | " | 20x40 |
| | Wood platform | | 16x122 |
| | Stock yards | | 80x90 |
| | Section house | " | 26x26 |
| | " " Chinese | " | 16x24 |
| Millis | 2318 ft. Side Tracks. | | |
| | Section house | " | 25x26 |
| Evanston | 5 M. 3209 ft. Side Tracks. | | |
| | Pass. depot | frame | 24x90 |
| | Freight depot | " | 35x107 |
| | Addn | " | 12x35 |
| | Asst. Supt's house | " | 22x26 |

| | | |
|---|---|---|
| Addn | frame | 16x18 |
| Car Supply house | " | 16x51 |
| Stock yards | " | 24000 sq. ft |
| Tank, pump house, &c. | | |
| Water from river. | " | 18x125 |
| Coal house | " | 26x26 |
| Section house | " | 16x18 |
| Addn | " | 15x21 |
| Addn | " | 26x26 |
| Section house | " | 30x80 |
| Ice house | " | 24 pockets |
| Coal chute | " | 20x30 |
| Tenement house | " | 16x18 |
| Addn | " | 8x11 |
| Addn | " | 20x30 |
| Tenement house | " | 10x14 |
| Addn | " | 20x30 |
| Tenement house | " | 10x20 |
| Addn | " | 20x30 |
| Tenement house | " | 16x20 |
| Addn | " | 14x25 |
| Addn | " | 20x30 |
| Tenement house | " | 10x20 |
| Addn | " | 24x24 |
| Tenement house | " | 12x14 |
| Addn | " | 24x24 |
| Tenement house | " | 10x20 |
| Addn | " | 24x24 |
| Tenement house | " | 10x12 |
| Addn | " | 24x24 |
| Tenement house | " | 10x12 |
| Addn | " | 18x27 |
| Tenement house | " | 13x18 |
| Addn | " | 9x17 |
| Addn | " | 14x44 |
| Coal bin | " | 14x49 |
| Coal bin | " | 34 ft. long |
| Track scales | " | 32x410 |
| Ice house | " | 20x60 |
| Carpenter shop | " | 31x35 |
| Boiler house | " | 10x11 |
| Addn | " | 60x135 |
| Blacksmith shop | " | 30x144 |
| Car shop | " | 12x24 |
| Addn | " | 9x14 |
| Oil house | " | 12x16 |
| Paint shop | " | 20x40 |
| M. M. Office | " | 14x24 |
| Hose house | " | 24x40 |
| Store house | " | 18x22 |
| Addn | " | 18x89 |
| Oil house(underground) | " | 20x30 |
| Sand house | " | 41x60 |
| Blacksmith shop | stone | |
| Round house—20 stalls | iron | 55 ft. |
| Turntable | frame | 32x80 |
| Hotel | " | 35x78 |
| Addn | " | 20x43 |
| " | " | 14x16 |
| " | " | 16x34 |
| Laundry | " | 10x15 |
| Refrigerator | " | 12x20 |
| Bunk house | | |

| | | | |
|---|---|---|---|
| | Stable | frame | 16x24 |
| | Coal house | " | 10x30 |
| | Car Reprs. office | " | 12x14 |
| | " shop | " | 10x12 |
| Almy Junction | 3 M. 2634 ft. Side Tracks. | | |
| | Depot | frame | 20x40 |
| | Section house | " | 25x52 |
| | Track scales | " | 42 ft. long |
| | Tenement house | " | 18x36 |
| | Addn | " | 14x26 |
| Wyuta | 1872 ft. Side Tracks. | | |
| | Section house | " | 18x48 |
| Wahsatch | 3145 ft. Side Tracks. | | |
| | Depot | " | 20x50 |
| | Section house | " | 26x26 |
| | Addn | " | 14x16 |
| | Stock yards | " | 63x122 |
| | Tank, stand pipe & reservoir. | | |
| | Water from spring. | | |
| | Wood platform | | 14x113 |
| Spur | 593 ft. Side Tracks. | | |
| | No buildings. | | |
| Castle Rock | 4940 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x36 |
| | " " Chinese | " | 12x24 |
| | Tank and windmill. | | |
| | Water from well. | | |
| Emery | 2819 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| | " " Chinese | " | 12x28 |
| | Tank—water from spring. | | |
| Echo | 2 M. 4605 ft. Side Tracks. | | |
| | Depot | " | 26x60 |
| | Section house | " | 26x26 |
| | " " | " | 26x26 |
| | Coal chute | " | 32 pockets |
| | Oil house | " | 16x20 |
| | Sand house | " | 12x14 |
| | Track scales | " | 30 ft. |
| | Tank, pump house, &c | | |
| | Water from river. | | |
| | Stock yards | | 47x49 |
| | Round house—4 stalls | frame | |
| Henefer | No Side Tracks. | | |
| | No buildings. | | |
| Croyden | 3645 ft. Side Tracks. | | |
| | Section house | " | 20x36 |
| | Addn | " | 12x18 |
| Mile 485.7 | No Side Tracks. | | |
| | Watchman's house | " | 16x28 |
| Morgan | 3997 ft. Side tracks. | | |
| | Depot | " | 20x80 |
| | Section house | " | 24x36 |
| | Tank—Water from spring. | | |
| Peterson | 2663 ft. Side Tracks. | | |
| | Depot | frame | 20x75 |
| | Section house | " | 24x36 |
| Strawberry | No side Tracks. | | |
| | Tank—Water from spring. | | |
| Devil's Gate | 2444 ft. Side Tracks. | | |
| | Section house | frame | 26x48 |
| | Watchman's house | " | 12x20 |

| | | | |
|---|---|---|---|
| | " " | frame | 12x20 |
| nitah | 2986 ft. Side Tracks. | " | 24x26 |
| | Depot | " | 14x16 |
| | Addn | " | 11x47 |
| | Coal bin | " | 28x34 |
| | Section house | " | 24x26 |
| | Bunk house | | |
| gden | 11 M. 1402 ft. Side Tracks. | | 40 pockets |
| | Coal chute | frame | 30x400 |
| | Ice house | " | 16x40 |
| | Coal bin | | |
| | Tank, pump house, water columns and pipe line. | | |
| | Water from city mains. | | |
| | Sand house | frame | 23x30 |
| | Oil house | brick | 20x28 |
| | Yardmaster's office | " | 16x26 |
| | Stock yards | | 34,400sq.ft. |
| | Track scales | | 40 ft. long |
| | Section house | frame | 24x35 |
| | Bunk house | " | 18x24 |
| | Round house—20 stalls | brick. | |
| | Turntable | iron | 60 ft. |
| | Car repair shop | frame | 20x42 |
| | Store house | " | 12x44 |
| | Hospital | brick. | 36x106 |

150. That the following schedule, marked "Schedule 4," is a more particular description of portions of the property above described, the record title of which stands in the name of trustees for the Union Pacific Railway Company, as therein shown, which property is included in the property of the Union Division of said railway.

## SCHEDULE 4.

### DOUGLAS COUNTY, NEBRASKA.

#### CITY OF OMAHA.

| Description. | Acres. |
|---|---|
| Lots 5, 6 & 7 in Block F | 0.60 |

DEXTER, ATKINS & MINK, TRUSTEES.

| | |
|---|---|
| Lot 1 in Block 178 in the City of Omaha, as surveyed and lithographed, subject to the taxes thereon for the year 1886 | 0.20 |

ATKINS, BAKER & MCFARLAND, TRUSTEES.

| | |
|---|---|
| All Lots numbers 2 and 3 in Block No. 178 in the City of Omaha | 0.40 |

ATKINS, BAKER & MCFARLAND, TRUSTEES.

| Description. | Acres. |
|---|---|
| All the following described Real Estate, situated in the City of Omaha, County of Douglas and State of Nebraska, to-wit: Lots 5, 6, 7 & 8 in Block 178; Lots 6, 7 & 8 in Block 179; excepting however from this conveyance all the interest heretofore acquired by the Union Pacific Railway Company for Right of Way in and to Lots 6, 7 & 8 in Block 179 and the interest under a certain verbal lease heretofore made of Lots 5, 6, 7 & 8 in Blk. 178 to John A. Wakefield, which expires, Feb. 1, 1887. The whole of said described premises is hereby conveyed subject to all taxes assessed and levied thereon for the year 1886, &c ..... | 1.22 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 5 in Block 179 as surveyed and platted by the Council Bluffs and Nebraska Ferry Co ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot No. 5 in Block 180 in the City of Omaha ..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot No. 6 and 8 in Block 180 in the City of Omaha. | 0.40 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 4 in Block 181 ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| All Lots 1 & 4 in Block 188 in the City of Omaha. Also a parcel of land adjoining said Lot 1 on the East, commencing at the NE corner of said Lot 1 in Block 188 aforesaid; thence South 132 feet to the SE corner of said Lot 1; thence East 20 feet; thence North 133 ft.; thence west 20 ft. to place of beginning. Containing 2640 square feet ..... | 0.46 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lots 2 and 3 Block 188 in the City of Omaha... | 0.40 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 1, 2 & 3 Block 189 South of Right of Way of the U. P. Ry. containing $1\frac{8}{8}$ of a regular City lot.. | 0.32 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| that portion of Lot 4 in Block 189 in the City of aha not included in a certain grant for Right of y made to the Union Pacific Railroad Company deed dated March 3, 1864, and recorded on the t day of the same month in Book "P" of deeds Page 301 of the records of said Douglas County ... | 0.02 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| rt of Lot 2 (being 6,534 sq. ft.) in Block 226 in the ty of Omaha, according to the Recorded Plat ereof ..... | |
| ots 7, 8, 9 & 10 in Block 15 and fractional Block 17 the Town of Millard ..... | 0.33 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| ots 7, 8, 9 & 10 in Block 23 in the Town of Waterloo. | 0.75 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## DODGE COUNTY NEBRASKA.

| | |
|---|---|
| Lots 1 & 2 in Block C in the City of North Bend .... Lot 5 in Block 53 in the City of North Bend, except East 15 feet of Lot ..... | 1.42 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## PLATTE COUNTY NEBRASKA.

CITY OF COLUMBUS.

| | |
|---|---|
| Lot 3 & 4 in Block 41 ..... | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEE. | |
| Lot 7 in Block 58 ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3 & 4 in Block 59 ..... | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 4 in Block 77 ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3 in Block 80 ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| Lot 1 & 2 in Block 86 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 8 in Block 100 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 5 and 6 in Block 101 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 in Block 102 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3 & 4 in Block 110 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 5 in Block 112 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 2 & 7 in Block 113 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 & 8 in Block 121 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 in Block 125 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 6 in Block 145 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 in Block 195 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 8 in Block 168 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 5 in Block 187 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3 & 4 in Block 190 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 in Block 195 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 1 in Block 199 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| Lot 1 in Block 209 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 6 in Block 211 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 7 in Block 224 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 1 & 7 in Block 225 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.40 |
| Lot 2 in Block 229 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 6 in Block 231 ..... DEXTER, ATKINS & MINK, TRUST[illegible]. | 0.20 |
| Lot 3, 5 & 6 in Block 232 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.60 |
| Lot 2 in Block 234 ..... DEXTER, ATKINS, & MINK, TRUSTEES. | 0.20 |
| Lot 2 in Block 259 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Out Lot 7 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 11.65 |
| Out Lot 9 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 7.75 |
| SE ¼ NW ¼ Sec. 20—17—1 W ..... DEXTER, ATKINS & MINK, TRUSTEES. | 40.00 |

## HALL COUNTY, NEBRASKA.

### CITY OF GRAND ISLAND.

| | |
|---|---|
| Lots 5, 6, 7 & 8 in Block 39 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.80 |
| Lots 5, 6, 7 & 8 in Block 40 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.80 |
| Lots 5, 6, 7 & 8 in Block 41 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.80 |

| Description. | Acres. |
|---|---|
| Lots 3, 4, 5 & 6 in Block 42 | 0.80 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| First addition to Grand Island. | |
| Frac. Lot 7 in Block 105 | 0.03 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## BUFFALO COUNTY, NEBRASKA.

### KEARNEY JUNCTION.

| | |
|---|---|
| Lots 89, 602, 719 | 0.80 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| (Park) Lots 1398, 1399, 1400, 1404, 1405, & 1406 | 0.90 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lots 1477 | 0.15 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## LARAMIE COUNTY, WYOMING.

### CITY OF CHEYENNE.

| | |
|---|---|
| Fractional Lot No. 1 in Block 833; Also Lots 1, 2 & 3 and frac. Lots 4, 5, 6, 7 & 8 in Block 834. Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 835; All in Section 32, T. 14 N. R. 66 W.; Also lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 386; Also Lots No. 1, 2, 3, 4, 5, 6, 7 & 8 in Block 837; Also Lots No. 1, 2, 3, 4, 5, 6, 7 & 8 in Block Block 838; Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 839—All in Section 32, T. 24, N. R. 66 W., as designated on the official plat of Townsite of said City of Cheyenne | 9.86 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 22 in Block 122, City of Laramie | 0.72 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

### SODA LAKES, NEAR LARAMIE, WYO.

| | |
|---|---|
| SW of NW of NE ¼<br>NW of SW of NE ¼<br>E ½ of NW ¼<br>S ½ of SW of NW ¼<br>NE of SW of NW ¼ | 4-14 N-75 W. |

¼ of NW of SW ¼ 5-14 N-75 W. NE of NE ¼ of E ¼ 6-14 N-75 W. SE of SE of SW ¼ 33-15 N-75 W. lso all claim in and to other portions of Sec's 4 & 5, . 14 N. R. 75-W. and in and to other portions of ec. 33 T. 15 N. R. 75, which may have been at any me vested in those through whom above property as obtained ..... 200.00

DEXTER, ATKINS & MINK, TRUSTEES.

WEBER COUNTY, UTAH.

A part of lot 6 in Block 4 in South Ogden Survey, beginning at the northwest corner of said lot 6 and running thence south 20 rods; thence east 10 rods; thence north 2½ rods; thence east 2 rods; thence north 17½ rods; thence west 12 rods to place of beginning ..... 1.47

ATKINS, DEXTER & LANE, TRUSTEES.

151. That the following schedule, marked "Schedule 5," is a more particular description of portions of the property above described as the present equipment of the Union Pacific Railway Company, showing certain particulars in relation to the conditions thereof, on December 31, 1896.

## SCHEDULE 5.

### THE UNION PACIFIC RAILWAY COMPANY.

*Particulars relating to the condition of the locomotives equipment, December 31, 1896, compared with the condition on October 13, 1893, the date of the appointment of the Receivers in the Ames case.*

| CONDITION | Number of Locomotives | | Percentage of Total | |
|---|---|---|---|---|
| | Dec. 31, 1896 | Oct. 13, 1893 | Dec. 31, 1896 | Oct. 13, 1893 |
| In service, in good working order | 368 | 328 | 68.91 | 61.43 |
| In service, needing general repairs | 61 | 47 | 11.42 | 8.80 |
| In service, needing light repairs | 31 | 62 | 58.1 | 11.61 |
| Total in service, needing repairs | 92 | 109 | 17.23 | 20.41 |
| Total in service | 460 | 437 | 86.14 | 81.84 |
| In shop, under general repairs | 33 | 83 | 6.18 | 15.54 |
| In shop, under light repairs | 8 | 11 | 1.50 | 2.06 |
| Total in shop | 41 | 94 | 7.68 | 17.60 |
| Vacancies to be filled | ..... | ..... | ..... | ..... |
| Unserviceable, but not dismantled | ..... | ..... | ..... | ..... |
| Too light for present traffic conditions | 8 | 3 | 1.50 | .56 |
| Not justifying expense of repairs | 25 | ..... | 4.68 | ..... |
| Total unserviceable | 33 | 3 | 6.18 | .56 |
| Leased to companies outside of Union Pacific System | ..... | ..... | ..... | ..... |
| Total Locomotive Equipment | 534 | 534 | 100.00 | 100.00 |

## The Union Pacific Railway Company.

*ulars relating to the condition of the car equipment, cember 31, 1896, compared with the condition on October 1893, the date of the appointment of the Receivers in Ames cause.*

| CONDITION | Number of | | Percentage of Total | |
|---|---|---|---|---|
| | Dec. 31, 1896 | Oct. 31, 1893 | Dec. 18, 1896 | Oct. 18, 1893 |
| Passenger Cars. (a) | | | | |
| vice in Good Order | (d)252 | 294 | 61.31 | 68.69 |
| Service— | | | | |
| rgoing light repairs | ..... | 7 | ..... | 1.64 |
| rgoing heavy repairs | 18 | 13 | 4.38 | 3.04 |
| ting repairs | 30 | 1 | 7.30 | .23 |
| tal undergoing or awaiting repairs | 48 | 21 | 11.68 | 4.91 |
| tal available, exclusive of Sleeping and Dining Cars | 300 | 315 | 72.99 | 73.60 |
| g Cars, first class | 69 | 70 | 16.79 | 16.35 |
| g Cars, "Tourist" or second class | 30 | 30 | 7.30 | 7.01 |
| Cars | 7 | 13 | 1.70 | 3.04 |
| ger Cars destroyed or broken up but yet replaced (c) | 5 | ..... | 1.22 | ..... |
| otal Passenger Cars | 411 | 428 | 100.00 | 100.00 |
| ht and other Cars. (b) | | | | |
| rvice in Good Order | 10,141 | 10,573 | 91.98 | 96.14 |
| of Service— | | | | |
| dergoing light repairs | 212 | 112 | 1.93 | 1.02 |
| dergoing heavy repairs | 30 | 53 | .27 | .48 |
| aiting repairs | 172 | 259 | 1.56 | 2.36 |
| Total undergoing or awaiting repairs | 414 | 424 | 3.76 | 3.86 |
| Total available | 10,555 | 10,997 | 95.74 | 100.00 |
| ght Cars destroyed or broken up but ot replaced (c) light for present traffic conditions. | 470 | ..... | 4.26 | ..... |
| Total Unserviceable | 470 | ..... | 4.26 | |
| Total Freight and Other Cars | 11,025 | 10,997 | 100.00 | 100.00 |
| nd Total, Car Equipment | 11,436 | 11,425 | | |

(a) Under the heading "Passenger Cars" are included all the cars hauled in passenger trains, including Baggage, Mail and Express Cars.

(b) Under the heading "Freight and other Cars" are included Caboose, Roadway and Work Cars.

(c) Subsequently to date of Receivership, October 13, 1893.

(d) Includes 5 composite cars.

Note.—Of the freight cars reported as in good order on December 31, 1896, 2809 x, 300 flat, 582 coal cars are old cars, too light for present traffic conditions. When ese cars become unserviceable they will not justify the expense of general repairs, but ould be replaced by cars of greater capacity and modern construction.

152. That the facts concerning the residence and citizenship of the several parties hereto, and the corporate character of such of said parties as are corporations, are as alleged in the pleadings herein in respect thereto.

153. That this suit is an action arising under the Constitution and laws of the United States, and that the amount involved exceeds the sum of $5,000, exclusive of costs.

CONCLUSIONS.

As my conclusions herein, I respectfully report

FIRST. That the Equipment Trust Indenture, hereinabove described, made, executed and delivered by the Union Pacific Railway Company to the American Loan and Trust Company, as Trustee, dated October 1, 1887, constitutes, in legal effect, a mortgage and lien, according to its terms, upon the engines and cars constituting the equipment described in my findings herein as subject to the Series A bonds issued under said trust indenture to the extent and amount which is now, or which may be hereafter owing upon said series A bonds as herein found;

And upon the engines and cars constituting the equipment described in my findings herein as subject to the Series B bonds issued under said trust indenture to the extent and amount which is now, or which may be hereafter due and owing upon said series B bonds as herein found;

And upon the engines and cars constituting the equipment described in my findings herein as subject to the Series C bonds issued under said trust indenture to the extent and amount which is now or may be hereafter owing upon said Series C bonds as herein found.

Superior and paramount to any and every estate, right, title, interest or claim in or to the same or any part thereof, of any and every person, party or corporation whatsoever, including the United States of America.

SECOND. That the said mortgage or deed of trust, known as the Omaha Bridge Mortgage, made, executed and delivered by the Union Pacific Railroad Company to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as Trustees, dated April 1, 1871, as supplemented by the Indenture of said railroad company, dated September 27, 1871, of which mortgage J. Pierpont Morgan and Edwin F. Atkins, defendants herein, are the present trustees, is a first

ortgage and lien to the amount thereof as herein found, ccording to its terms, upon all the property described in y findings herein as the property of the Omaha Bridge ivision of the Union Pacific Railway Company, superior nd paramount to every estate, right, title, interest or laim in or to the same or any part thereof, of any and every erson, party or corporationn whatsoever, including the Jnited States of America, excepting only the lien of the American Loan and Trust Company, trustee under its equipment trust indenture of October 1, 1887, to the extent and so far as the same effects the equipment belonging to the said Omaha Bridge Division of said railway company's property.

THIRD. That the said mortgage or deed of trust known as the Omaha Bridge Renewal Mortgage, made, executed and delivered by the Union Pacific Railway Company to the Central Trust Company of New York as trustee, dated October 1, 1885, of which mortgage said Central Trust Company of New York, defendant herein, is the present trustee, is a mortgage and lien, according to the terms thereof, to the extent and amount which is now or may hereafter be owing upon the bonds secured thereby as hereinabove found, being the principal amount of $734,000, and interest thereon at five per cent. per annum from October 1, 1894, upon all the property described in my findings herein as the property of the Omaha Bridge Division of the Union Pacific Railway Company, except, however, the moneys, credits and property which the Receivers herein have derived or may hereafter derive from the use and operation of said property by them as such Receivers, superior and paramount to any and every estate, right, title, interest or claim in or to the same, or any part thereof, of any and every person, party or corporation whatsoever, including the United States of America, excepting only the lien of the American Loan and Trust Company, trustee under its equipment Trust Indenture of October 1, 1887, to the extent and so far as the same affects the equipment of the Omaha Bridge Division property, and the lien of the said Omaha Bridge mortgage of which J. Pierpont Morgan and Edwin F. Atkins are trustees, dated April 1, 1871, to the extent and so far as the same affects the Omaha Bridge Division of said railway company's property.

FOURTH. That the mortgage or deed of trust made, executed and delivered by said the Union Pacific Railroad Company to Edwin D. Morgan and Oakes Ames, as trustees, dated November 1, 1865, as supplemented by the indenture of March 12, 1868, upon which mortgage the complainants herein, as the present trustees thereunder, complain in this suit, is a first mortgage and lien, according to the terms thereof, to the extent which is now or may hereafter be owing upon the bonds secured thereby, as herein above found, upon all the property hereinabove described as constituting the property of the Union Division of the Union Pacific Railway Company and the Omaha Bridge Division of the Union Pacific Railway Company, superior and paramount to any and every estate, right, title, interest or claim in or to the same, or any part thereof, of any person, party or corporation whatsoever, including the United States of America, excepting only,

The lien of the American Loan and Trust Company, Trustee under the Equipment Trust Indenture of the Union Pacific Railway Company, dated October 1, 1887, to the extent and so far as the same affects the equipment of the said Union Division and the said Omaha Bridge Division of said railway and

The lien of said Omaha Bridge Mortgage of the Union Pacific Railroad Company dated April 1, 1871, to the extent and so far as the same affects the property of the Omaha Bridge Division of said railway and

The lien of the said Omaha Bridge Renewal Mortgage of the Union Pacific Railway Company, dated October 1, 1885, to the extent and so far as the same affects the property of the Omaha Bridge Division of the said railway company, and also the right of the United States to have the preference at all times in the use, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the telegraph line and railroad embraced in said mortgage for the transmission of dispatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the government whenever required by any department thereof.

FIFTH. That the *ipso facto* mortgage or lien of the United States of America, hereinabove described, is a mort-

gage and lien to the extent and amount which has heretofore or may hereafter be paid by the United States of America for principal and interest upon the said subsidy bonds issued by it as herein found, to said Union Pacific Railroad Company, and which has not been repaid, as hereinabove found and stated, upon all the property herein described as constituting the property of the Union Division of the Union Pacific Railway Company and the Omaha Bridge Division of the Union Pacific Railway Company, except, however, the moneys, credits and property which the Receivers herein have derived or may hereafter derive from the use and operation of said property by them as such Receivers, subject to the said liens of the mortgages hereinabove described, being the Equipment Trust Indenture held by the American Loan and Trust Company, Trustee, dated October 1, 1887; the Omaha Bridge Mortgage dated April 1, 1871, held by J. Pierpont Morgan and Edwin F. Atkins, Trustees, the Omaha Bridge Renewal Mortgage, dated October 1, 1885, held by the Central Trust Company, of New York, Trustee, and the first mortgage of the Union Pacific Railroad Company, dated November 1, 1865, held by F. Gordon Dexter and Oliver Ames, Trustees, to the extent and amount of such liens as hereinabove found, and superior and paramount to any and every other estate, right, title, interest or claim in or to said property or any part thereof, of any and every other person, party or corporation whatsoever.

That said United States Union Pacific Sinking fund, established under said act of Congress of May 7, 1878, as the same exists, is applicable to the payment and satisfaction of the subsidy bonds so issued and delivered by the United States to the Union Pacific Railroad Company, and of all interest paid by the United States thereon and not reimbursed, as and upon the conditions provided in said Act of Congress of May 7, 1878.

SIXTH. That the said mortgage or deed of trust, known as the Sinking Fund Mortgage, made, executed and delivered by the Union Pacific Railroad Company to the Union Trust Company, of New York, Trustee, dated December 18, 1873, as supplemented by the extension agreement dated August 9, 1893, is a mortgage and lien, according to the terms thereof, to the amount and extent which is now or may hereafter be owing upon the bonds secured thereby, as herein found, upon all the property described in my find-

ings herein as the property of the Union Division of the Union Pacific Railway Company and of the Omaha Bridge Division of the Union Pacific Railway Company, except, however, the moneys, credits and property which the Receivers herein have derived or may hereafter derive from the use and operation of said property by them as such Receivers, subject to the liens of the following named mortgages, hereinabove described:

The Equipment Trust Indenture of the Union Pacific Railway Company, dated October 1, 1887, held by the American Loan and Trust Company, Trustee.

The Omaha Bridge Mortgage of the Union Pacific Railroad Company, dated April 1, 1871, held by J. Pierpont Morgan and Edwin F. Atkins, Trustees; the Omaha Bridge Renewal Mortgage of the Union Pacific Railroad Company, dated October 1, 1885, held by the Central Trust Company, of New York, Trustee; the First Mortgage of the Union Pacific Railroad Company, dated November 1, 1865, held by F. Gordon Dexter and Oliver Ames, Trustees, and the lien of the United States of America, as hereinabove found, and also the preference right of the United States in the use as aforesaid of said railroad and telegraph at reasonable rates of compensation, but superior and paramount to any and every other estate, right, title, interest or claim in or to said property, or any part thereof, of any and every other person, party or corporation whatsoever.

That said Sinking Fund Mortgage is also a first and only mortgage and lien upon all and singular the lands granted to said Union Pacific Railroad Company under Acts of Congress, and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in or to the same, or any part or parcel thereof, which said Union Pacific Railway Company, defendant herein, now has, holds, owns or has title to, or which it may hereafter acquire, have, hold, own or be or become entitled to, by force or by virtue of said Acts of Congress, saving and excluding all parts and parcels of said lands which shall have been, previous to the execution of said mortgage, conveyed or contracted to be conveyed by the said Union Pacific Railroad Company or said Union Pacific Railway Company to purchasers thereof, and saving and excepting all parts or parcels of said lands which have been conveyed by the trustees of said mortgage, or re-

ased from the operations thereof under the terms of said ortgage.

SEVENTH. That said the Union Pacific Railway Com- any has defaulted in the payment of the principal obliga- ons of its bonds and mortgage herein described as the irst Mortgage of the Union Pacific Railroad Company dated November 1, 1865, complained upon in this suit, in the prin- ipal amount of $6,475,000 due January 1, 1896, and $1,598- 00 due January 1, 1897, and that said railway company is wholly insolvent, and unable to pay said indebtedness.

That the railroad, telegraph, rolling stock, equipment and other property and franchises, rights, functions, im- munities and appurtenances of said defendant railway com- pany embraced in said First Mortgage, are so situated and are of such a nature that the same cannot be sold in parcels without great injury to all parties in interest, and that it is expedient that the same be sold as an entirety.

EIGHTH. That the complainants herein are entitled to a judgment and decree of this Court foreclosing their said mortgage and fixing and determining the several liens upon said property as hereinabove found, and adjudging and de- creeing that the property of the said defendant the Union Pacific Railway Company described as subject to the lien of the mortgage of the complainants herein, be sold in one parcel, subject only to the preference right of the United States in the use, as aforesaid, of said railroad and telegraph at reasonable rates of compensation, and to the liens thereon of the said Equipment Trust Indenture, held by the Ameri- can Loan and Trust Company, dated October 1, 1887, the Omaha Bridge Mortgage held by J. Pierpont Morgan and Edwin F. Atkins, Trustees, dated April 1, 1871, and the Omaha Bridge Renewal Mortgage held by the Central Trust Company of New York, Trustee, dated October 1, 1885, free and clear of all right, title, interest, liens and claims of the said the Union Pacific Railway Company and each of the other defendants to this suit, and applying the proceeds of such sale in the payment of complainants said mortgage, all agreeably to the rules and practice of this Court.

Respectfully submitted,

WM. D. CORNISH,
Special Master.

Dated July 20, 1897.
Filed July 29, 1897.

IN THE CIRCUIT COURTS OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH AND SOUTHERN DISTRICT OF IOWA.

*(Title of cause omitted.)*

EXCEPTIONS TAKEN BY THE COMPLAINANTS, F. GORDON DEXTER AND OLIVER AMES, TRUSTEES OF THE FIRST MORTGAGE OF THE UNION PACIFIC RAILROAD COMPANY, TO THE REPORT FILED IN THIS CASE BY HONORABLE WILLIAM D. CORNISH, SPECIAL MASTER.

Now come F. Gordon Dexter and Oliver Ames, trustees, complainants in this cause, and except to the report of Hon. William D. Cornish, Special Master, to whom said cause was referred by order of Court, dated March 25th, 1897.

FIRST EXCEPTION

Although requested by these complainants to so find, the said Special Master has failed and omitted to find that the First Mortgage of the Union Pacific Railroad Company, of November 1st, 1865, is a valid first, superior and paramount lien upon all that portion of the railroad, telegraph, roadbed, right of way, bridge and property of the Union Pacific Railway Company embraced in and covered by the Omaha Bridge Mortgage of the Union Pacific Railroad Company to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as trustees, dated April 1st, 1871, and the supplemental indenture to said mortgage, dated September 27th, 1871; and the Omaha Bridge Renewal Mortgage of the Union Pacific Railway Company to the Central Trust Company, dated October 1st, 1885.

SECOND EXCEPTION.

These complainants except to the second conclusion of the said Special Master, where the said Master determines and concludes, against the protest and argument of

these complainants, that the mortgage or deed of trust known as the Omaha Bridge Mortgage, made, executed and delivered by the Union Pacific Railroad Company to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as trustees, dated April 1st, 1871, as supplemented by the indenture of said railroad company, dated September 27th, 1871, of which mortgage John Pierpont Morgan and Edwin F. Atkins, defendants herein, are the present trustees, is a first mortgage and lien to the amount thereof, as in said report found, according to its terms upon all the property described in the findings embraced in said report as the property of the Omaha Bridge Division of the Union Pacific Railway Company superior and paramount to every estate, right, title, interest or claim in or to the same or to any part thereof, of any and every person party or corporation superior and paramount to the estate, right, title, interest, claim and lien of these complainants as trustees of the said first mortgage of the Union Pacific Railroad Company, dated November 1st, 1865. And these complaniants further except to the said second conclusion of the said Master, made against the protest and arguments of these complainants, to the effect that the bridge mortgages in said second conclusion mentioned embrace in the lien thereof all of the property described in the findings of the said Special Master as the property of the Omaha Bridge Division of the Union Pacific Railway Company.

THIRD EXCEPTION.

These complainants except to the third conclusion of the said Special Master, where the said Master determines and concludes, against the protest and argument of these complainants, that the mortgage or deed of trust known as the Omaha Bridge Renewal Mortgage, to the Central Trust Company, as trustee, dated October 1st, 1885, of which mortgage the said Central Trust Company of New York, defendant herein, is the present trustee, is a mortgage and lien, according to the terms thereof, to the extent and amount in said Third conclusion mentioned, upon all the property described in the findings of the said Special Master as the property of the Omaha Bridge Division of the Union Pacific Railway Company (except as in said conclusion mentioned) superior and paramount to

the estate, right, title, interest, claim and lien of these complainants.

FOURTH EXCEPTION.

These complainants except to the fourth conclusion of the said Special Master, made against the protest and argument of these complainants, and to the effect that the mortgage or deed of trust of the Union Pacific Railroad Company, dated November 1st, 1865, as supplemented by the indenture of March 12, 1868, under which said mortgage and supplemental indenture these complainants are trustees, is subject to the lien of said Omaha Bridge Mortgage of the Union Pacific Railroad Company, dated April 1st, 1871, to the extent and so far as the same affects the property of the Omaha Bridge Division of the said railway, and to the lien of the Omaha Bridge Renewal Mortgage of the Union Pacific Railway Company, dated October 1st, 1885, to the extent and so far as the same affects the property of the Omaha Bridge Division of the said railway.

FIFTH EXCEPTION.

And these complainants further except to the Eighth conclusion of the said Special Master, made against the protest and argument of these complainants, to the extent that the said Special Master there determines and concludes that the foreclosure and sale to which these complainants are entitled as trustees of said First Mortgage of November 1st, 1865, should be made subject to any lien of the Omaha Bridge Mortgage held by the defendants, John Pierpont Morgan and Edwin F. Atkins, trustees, dated April 1st, 1871, and the Omaha Bridge Renewal Mortgage, held by the Central Trust Company of New York, dated October 1st, 1885.

All of which said exceptions, although presented to the said Master, were disallowed by him, wherefore these complainants pray that the same may be granted by the Court.

F. Gordon Dexter and Oliver Ames, Trustees,
Complainants,

By WINSLOW S. PIERCE,
R. S. HALL,
Their Solicitors.

Dated July 20, 1897.

Filed: In Nebraska Court July 29, 1897.
Iowa Court July 29, 1897.
Colorado Court July 31, 1897.
Wyoming Court July 31, 1897.
Utah Court August 2, 1897.

**Order overruling certain exceptions to Master's report.**

July 12, 1897.

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IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

F. Gordon Dexter and Oliver Ames, Trustees,
Complainants,
vs.
The Union Pacific Railway Company, et al.,
Defendants.

The United States of America,
Complainant,
vs.
The Union Pacific Railway Company, et al.,
Defendants.

ORDER.

The exceptions of F. Gordon Dexter and Oliver Ames, as Trustees, and the exceptions of the United States, to the reports of the Master in these cases, were presented to the Court and argued by counsel; Mr. Winslow S. Pierce, for Dexter and Ames, trustees; Mr. George Hoadly, for the United States; Mr. John F. Dillon, for the Union Pacific Railway Company.

After due consideration by Sanborn, J.,

IT IS ORDERED, That the reports of the Master herein dated July 20th, 1897, be and the same are in all things confirmed, and the exceptions thereto are overruled, save this; that the Court finds and holds that the American

Loan and Trust Company, as trustee under the Equipment Trust Indenture, dated October 1, 1887, and the Equipment Trust Indenture, dated February 1, 1893, is the owner of and holds the title to, all the property described in said trust indentures until the bonds secured thereby are fully paid, and for the purpose of securing the payment thereof.

**Decree of foreclosure.**

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IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EIGHTH JUDICIAL CIRCUIT AND DISTRICT OF NEBRASKA.

At a Circuit Court of the United States held in and for the District of Nebraska in the City of Omaha on the 29th day of July, 1897.

Present—HON. WALTER H. SANBORN,
Circuit Judge.

(*Title of cause omitted.*)

FINAL DECREE.

This cause came on to be heard on the bill of complaint of F. Gordon Dexter and Oliver Ames, Second, Trustees, complainants, and upon the answers of The Union Pacific Railway Company, The United States of America, The Union Trust Company of New York, Trustee, J. Pierpont Morgan, and Edwin F. Atkins, Trustees, The Central Trust Company of New York, Trustee, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers, and upon the replications to said answers respectively, and upon the supplemental bill of complaint and the answers thereto, and upon the proofs in said cause and the report therein of William D. Cornish, Special Master, to whom said cause was referred by order dated March 25th, 1897, which said report was filed in said cause on the 29th day of July, 1897, and upon the exceptions to said report filed by the said complainants herein and by the defendants the United States of America, and upon all the papers and proceedings in said cause, and

appeared to the Court that orders have been entered that he bill of the said complainants F. Gordon Dexter and Oliver Ames, Second, Trustees to be taken as confessed against the defendants The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Omaha & Republican Valley Railway Company, The Kearney & Black Hills Railway Company, Frank H. Peavey, E. C. Michener and Charles F. Peavey, copartners under the firm name and style of F. H. Peavy & Company, the Union Pacific, Denver & Gulf Railway Company, The Salina & Southwestern Railway Company, The Missouri Pacific Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company and Chicago & Northwestern Railway Company, which said orders taking said bill *pro confesso* are hereby confirmed; and it further appeared that orders have been entered in said cause dismissing the bill of complaint and supplemental bill therein as against the defendants the Central Pacific Railroad Company, The Southern Pacific Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway Company and the Chicago, Kansas & Nebraska Railway Company.

And the complainants in said cause, and the defendants therein, namely: The Union Pacific Railway Company, The Union Trust Company of New York, Trustees; J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers appearing by their respective solicitors and counsel, and the United States of America appearing by the Attorney-General and by Mr. George Hoadly, Special Assistant to the Attorney-General, and Mr. John C. Cowin, special counsel for the United States, and the same having been argued by counsel, and the Court being fully advised in the premises, and due deliberation being had, it is

ORDERED, ADJUDGED AND DECREED:

1. EXCEPTIONS TO MASTER'S REPORT OVERRULED. REPORT CONFIRMED. That the several exceptions filed

by the complainants and by the defendant the United States of America to the report of William D. Cornish, Special Master, to whom this cause was referred by order therein dated March 25th, 1897, which said report was filed in said cause upon 29th day of July, 1897, be and the same are hereby overruled and said report is hereby, in all respects, approved and confirmed, except as herein otherwise expressly determined.

2. INCORPORATION OF THE UNION PACIFIC RAILROAD COMPANY. POWERS AND ROUTE. That The Union Pacific Railroad Company was duly incorporated and organized under and by virtue of an Act of Congress of the United States, entitled "An Act to aid in the construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1st, 1862; also, an Act of Congress amendatory thereof, approved July 2nd, 1864, and other Acts of the Congress of the United States amendatory thereof and supplemental thereto.

And said The Union Pacific Railroad Company was, by the Congressional legislation aforesaid, authorized to lay out, locate, construct, furnish, maintain and enjoy the continuous railroad and telegraph described and embraced in in the First Mortgage of said Railroad Company hereafter mentioned, and which said railroad extends from Council Bluffs, on the Iowa bank of the Missouri River, across said river and through the States of Nebraska, Colorado and Wyoming, into the State of Utah, to a connection with the railroad of the Central Pacific Railroad Company, at a point about five miles West of the City of Ogden, in the State of Utah, a distance of 1,042.41 miles, more or less, of main line, including the bridge over the Missouri River between Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska; all of which line of railroad and telegraph and bridge, with the branches and appurtenances thereof, were located, constructed, equipped and furnished by The Union Pacific Railroad Company, as, in the manner and upon the conditions, within the times and upon the approvals and consents contemplated, defined and described in said legislation.

3. FORMATION BY CONSOLIDATION OF THE UNION PACIFIC RAILWAY COMPANY. That the defendant, The

ion Pacific Railway Company is a corporation created and existing under and by virtue of the said Acts of the ngress of the United States of July 1st, 1862, and of July d, 1864, and the other Acts of the Congress of the United ates amendatory thereof and supplemental thereto. That e said The Union Pacific Railway Company was formed n or about the 24th day of January, 1880, under and by rtue of the powers and provisions contained in said several cts of Congress of the United States, by the consolidation f The Union Pacific Railroad Company, the Kansas Pacific ailway Company and the Denver Pacific Railway and elegraph Company, and said The Union Pacific Railway ompany, so created, thereupon became the successor to ach and all of the said constituent Companies, and thereby ecame vested with all the rights, titles, interest, lands, and and grants, properties and franchises of each and all of the aid constituent Companies; and said The Union Pacific Railway Company is the owner of the said railroad, property and franchises embraced in the mortgage of The Union Pacific Railroad Company dated November 1st, 1865, under which the complainants F. Gordon Dexter and Oliver Ames, 2nd, are Trustees, and which is hereinafter more fully referred to; and said The Union Pacific Railway Company, in addition thereto, is the owner of the further lines of railway and property described in the origianl bill of complaint herein extending from Kansas City, in the State of Missouri, westerly through the State of Kansas and into the State of Colorado to Denver, and from Denver in the State of Colorado, in a northerly direction, to Cheyenne in the State of Wyoming.

4. Issue of First Mortgage Bonds. Description and Amount. That the said The Union Pacific Railroad Company, pursuant to and in accordance with the powers conferred upon it by law, and pursuant to due corporate action, and for the purpose of providing means to construct and complete its said railroad, did duly make, execute and issue under its corporate seal, and did deliver to various persons, firms and corporations, for value and for the considerations and purposes and in the manner provided by its First Mortgage hereinafter mentioned, its First Mortgage bonds to the number of 27,229 in the aggregate amount of $27,229,000, all of which bonds were, as issued and delivered, duly certified by the trustees named in said mortgage as

therein provided, and all of which bonds are now outstanding and in each of which bonds the said The Union Pacific Railroad Company promised to pay the sum of one thousand dollars to the holder thereof at its office in the City of New York, thirty years after the date thereof, and also interest thereon at the rate of six per centum per annum, payable semi-annually from the date thereof in lawful money of the United States until the principal sum should be paid, on presentation of the interest coupons annexed thereto, at the office of the said Company, in the City of New York; and said bonds were issued in the installments, and bearing the dates, and maturing at the dates, respectively, as follows:

Said bonds, to the amount of $6,475,000 were issued, bearing date the first day of January, 1866, and maturing, by the terms thereof, on the first day of January, 1896.

Said bonds, to the amount of $1,598,000 were issued, bearing date the first day of January, 1867, and maturing by the terms thereof, on the first day of January, 1897.

Said bonds, to the amount of $1,920,000, were issued, bearing date of first day of July, 1867, and maturing by the terms thereof, on the first day of July, 1897.

Said bonds, to the amount of $5,999,000, were issued, bearing date the first day of January, 1868, and maturing, by the terms thereof, on the first day of January, 1898.

Said bonds, to the amount of $8,837,000, were issued, bearing date the first day of July, 1868, and maturing, by the terms thereof, on the first day of July, 1898.

Said bonds, to the amount of $2,400,000 ,were issued, bearing date the first day of January, 1869, and maturing , by the terms thereof, on the first day of January, 1899.

5. Execution of First Mortgage, November 1, 1865. Supplemental Mortgage, March 21, 1868. That, pursuant to and in accordance with the powers conferred upon it by said legislation, and pursuant to due corporate action and for the purpose of securing the payment of the

ds aforesaid, issued and to be issued, with the interest
e and to grow due thereon, and for other lawful considera-
ns, the said The Union Pacific Railroad Company did
ly make and execute under its corporate seal and did
liver to Edwin D. Morgan, of the City of New York, and
kes Ames, of Easton, in the state of Massachusetts, as
ustees, a mortgage or deed of trust dated the first day of
ovember, 1865, wherein and whereby the said The Union
cific Railroad Company did bargain, sell, assign, transfer
d set over, enfeoff, convey and confirm unto the said
dwin D. Morgan and Oakes Ames, as Trustees, and in trust
r the purposes aforesaid and to the survivors, of them,
nd to their successor or successors, all and singular, the
ilroad, telegraph, property and franchises in said mort-
age described as follows:

"All and singular the railroad and telegraph of the
aid party of the first part [the said Union Pacific Railroad
Company], heretofore constructed, or hereafter to be con-
tructed, from a point on the western boundary of the State
f Iowa, heretofore fixed by the President of the United
States, pursuant to the terms and provisions of said Acts of
Congress, to-wit, at the City of Omaha, in the territory of
Nebraska; thence, as provided in said Acts of Congress,
through the territories of the United States to the western
boundry of the late territory of Nevada, together with all
its lands, tenements, hereditaments, rights of way, and
easements acquired or appropriated, or which shall be here-
after acquired or appropriated, for the purpose of a right of
way for a single, double or other track, railroad and tele-
graph line, and for depots, engine-houses, car-houses, station
houses, ware-houses, machine shops, superstructures, erec-
tions and fixtures, being necessary for the use of said rail-
road or telegraph; and also all and singular the franchises
now owned, possessed or acquired, or which shall be here-
after owned, possessed or acquired, by the said party of the
first part, for the purpose of building and operating said
railroad and telegraph above specified and described; and
also all the rails, depots, yards, engine-houses, car-
houses, station-houses, warehouses, machine shops, work
shops and fixtures of said party of the first part; and also
all goods and chattels now owned, or which shall hereafter
be owned or acquired, by said party of the first part, neces-

sary to said railroad and telegraph line, or the running and operating the same."

That subsequently and on or about the 12th day of March, 1868, the said The Union Pacific Railroad Company as thereto authorized by law and in pursuance of due corporate action, made and entered into an agreement or indenture supplemental to said mortgage of November 1st, 1865, with said Edwin D. Morgan and Oakes Ames, Trustees, dated the said 12th day of March, 1868, wherein and whereby the said The Union Pacific Railroad Company, for the consideration therein expressed, agreed with the said Edwin D. Morgan and Oakes Ames, Trustees, for the benefit of all who then were or should thereafter be holders of said First Mortgage Bonds, and to and with the successors of said Trustees in the trust created by said indenture of mortgage of November 1st, 1865, that the principal of all of said First Mortgage Bonds, being one thousand dollars each, as well such as had then been issued as such as should thereafter be issued, should and would be paid by the said Railroad Company, whensoever they should respectively become payable according to the tenor thereof, in gold coin of the United States at par; that is to say, one thousand dollars of such coin for each of said bonds, and thereafter The Union Pacific Railroad Company or its successor Company, The Union Pacific Railway Company , caused to be stamped upon such of said First Mortgage Bonds, issued and secured by the said mortgage of November 1st, 1865, as were presented for that purpose, a provision to the effect that the same should be payable in United States Gold Coin.

6. TRUSTEES IN SAID FIRST MORTGAGE. That said Edwin D. Morgan and Oakes Ames duly accepted said mortgage of November 1st, 1865, and the trusts thereunder and continued to be and act as the trustees thereof until their deaths respectively. That on May 8th, 1873, the said Oakes Ames died, and on December 3rd, 1873, Oliver Ames was duly appointed trustee in the place and stead of the said Oakes Ames; and the said Oliver Ames afterwards, to-wit, on March 9th, 1877, died, and on June 1st, 1881, Frederick L. Ames was duly appointed trustee in the place and stead of the said Oliver Ames. That on February 14th, 1883, Edwin D. Morgan died, and on March 6th, 1883, F. Gordon Dexter, one of the aforesaid complainants, was

duly appointed successor trustee in the place and stead of said Edwin D. Morgan. That on September 13th, 1893, Frederick L. Ames died, and on October 12th, 1893, Oliver Ames, 2d, one of the aforesaid complainants, was duly appointed trustee under said mortgage in the place and stead of said Frederick L. Ames. That each of the said trustees, original and successor, duly accepted the said mortgage and the trusts thereunder, and said F. Gordon Dexter and Oliver Ames, 2nd, now are the trustees under said mortgage, and the said agreement of March 12th, 1868, supplemental thereto, and the said F. Gordon Dexter and Oliver Ames, 2nd have of right and as thereto duly authorized instituted and maintained this cause in which they are complainants, for the relief therein sought and herein decreed.

7. LIEN OF FIRST MORTGAGE, ITS EXTENT AND RANK DEFINED. That the lien of the said First Mortgage of November 1st, 1865, is subject and subordinate to the right of the Government to have the preference, at all times, in the use, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the telegraph line and railroad embraced in said mortgage for the transmission of despatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon such railroad for the Government whenever required by any department thereof.

And said First Mortgage is a lien subordinate and inferior to the title of the American Loan and Trust Company, as shown by the Equipment Trust Indenture of the Union Pacific Railway Company to the said American Loan and Trust Company, dated October 1st, 1887, to the extent and so far as the said Indenture affects the portion of the equipment therein embraced, which is hereinafter decreed to pertain to the mortgaged premises covered by said First Mortgage, and to the extent of the purchase money indebtedness herein found to be outstanding, as recited in said Equipment Trust Indenture.

And said First Mortgage is a lien subordinate and inferior to the lien of the Omaha Bridge Mortgage of the Union Pacific Railroad Company to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins as trustees, dated the 1st day of April, 1871, and to the indenture supplemental thereto, dated the 27th of September, 1871, and

to the Omaha Bridge Renewal Mortgage executed by The Union Pacific Railway Company, to the Central Trust Company of New York, as trustee, dated the 1st day of October, 1885, upon, to the extent and in respect of the premises embraced in and covered by the said Bridge Mortgages, and to the extent of the indebtedness thereby secured, as hereinafter found to be outstanding and unpaid.

That said First Mortgage of November 1st, 1865, is, with the exceptions last above stated and decreed, a valid and subsisting first mortgage and lien superior and paramount to any and every lien, estate, right, title, interest or claim, of any person, party or corporation whomsoever, including the United States of America, upon all the railroad, telegraph, premises, rights, franchises, lands and property described in said mortgage, including the railroad, right of way, and railroad property of the Union Pacific Railway Company extending from the eastern terminus of the Union Pacific Railway on the east line of the said Railway Company's property between Twelfth Avenue and Thirteenth Avenue in Council Bluffs, Iowa, in a westerly direction to Twentieth Street in Omaha, Nebraska, including the railroad and railroad bridge across the Missouri River, and extending from the initial point of construction of the Union Pacific Railroad near the northeast corner of and within section 10, Township 15, range 13, east of the 6th principal meridian in Omaha, Nebraska, in a southerly and westerly direction through the City of Omaha to Twentieth Street in said City of Omaha at a junction with that part of said railroad from Council Bluffs aforesaid, and extending thence in a westerly direction through the counties of Douglas, Sarpy, Dodge, Colfax, Platte, Merrick, Hall, Buffalo, Dawson, Lincoln, Keith, Deuel, Cheyenne and Kimball in the State of Nebraska, and Sedgwick County in the State of Colorado, and the Counties of Laramie, Albany, Carbon, Sweetwater and Uintah in the State of Wyoming, and the Counties of Summit, Morgan, Davis and Weber in the State of Utah, to a junction with the Central Pacific Railroad at a point five miles west of Ogden in the State of Utah, a distance of 1,042.41 miles of main line railroad; and also the rights of way, railroads and railroad tracks constituting spurs or branch lines of railroad extending from points of junction with the said main lines, (1) at a point about .6

a mile west of what is known as Transfer Depot at Coun-
l Bluffs, in a northeasterly direction to what is known as
ne Broadway Depot in said city, a distance of 1.72 miles
the city of Council Bluffs; (2) at Almy Junction, Wyo-
ning, in a northerly direction to a terminus at Mine No.
even, a distance of 3.88 miles; (3) at Cheyenne, Wyo-
ning, in a northwesterly direction to a connection with
he track of the Union Pacific, Denver and Gulf Railway,
distance of 2.04 miles; (4) at a point on said main line in
Omaha, Nebraska, northerly and easterly, a distance of
18,000 feet to certain ice houses and industries on what is
known as Cut-off Lake; also lots, yards, terminal grounds,
shop grounds, streets and alleys, lands and tracts of land,
tenements and hereditaments, easements and rights of
way owned or acquired or appropriated by or for the
Union Pacific Railroad Company, The Union Pacific Rail-
way Company or the said Receivers for the purposes of
said lines of railroad, including all lands so acquired or
appropriated the title to which stands in the names of
trustees for said The Union Pacific Railway Company;
and also all lands acquired for or used for stations or for
terminal purposes, and also all rights and estates, legal
and equitable, of The Union Pacific Railway Company in
and to all stations, depots and in and to all union depots
upon or connected with the line of its railway or used in
connection therewith, and including all the lands and
other property described in the said report of the Special
Master, and in the Schedules therein embraced, num-
bered 1, 2, 3, 4 and 5, all the said property being property
owned, acquired or appropriated and necessary to the use
and operation of the said railroad; also the shops, freight
depots, general office buildings, roundhouses, depots, en-
gine houses, car houses, station houses, machine shops,
workshops, rails, switches, turnouts, spurs, side tracks,
sidings and other structures and facilities upon said mort-
gaged premises, constructed, acquired or owned for the
purposes of or in connection with said lines of railway; also
the lands, interests and easements in lands, pipes, pump-
houses, structures, pipe lines, appliances, facilities and
easements of said company pertaining to the water supply
upon or along said lines of railroad, and the tools, appli-
ances, fixtures, materials and supplies owned or acquired
for the purposes thereof; also the locomotives, passenger

cars, Pullman sleeping cars, dining cars, freight cars and other cars and all other equipment and rolling stock, owned by the Union Pacific Railway Company, and all interest of said The Union Pacific Railway Company in any other equipment or rolling stock, to the extent that said equipment and rolling stock so owned, or in which the said railway company has any interest, was acquired or provided for or by said railway company for the purposes of said railroad and mortgaged premises or is necessary for the running and operation thereof, the same being the undivided seventy per cent. of all the rolling stock or equipment owned by The Union Pacific Railway Company or in which said company has any interest; also all the lines of telegraph, telegraph material, instruments, fixtures and appliances belonging to the said railway company and located upon or used in connection with said mortgaged premises; also all furniture, fixtures, appliances, apparatus, supplies and material owned, acquired or provided by said Company for use in connection with said railroad and mortgage premises, located in the various offices of said railway company upon or remote from said railroad, including the offices of said company in the cities of Omaha, Nebraska, and Boston, Massachusetts, and also all the property of said Union Pacific Railway Company and all its rights and interests in and to property of every kind and nature, whether of the character herein described or otherwise, and the corporate rights and franchises of said The Union Pacific Railroad Company or its successors The Union Pacific Railway Company, so far as such property, rights, interests and franchises pertain to the said railroad, telegraph and mortgaged premises; also all the moneys, credits and property not herein otherwise specified, in the possession of or under the control of the said Receivers in this cause, or to which said Receivers are or may be entitled, which have been or may be derived by said Receivers from or on account of said mortgaged premises, or from the sale or other disposition of any of said mortgaged property or from the operation of the said mortgaged premises by said Receivers, subject to the charges of the Receivers in respect thereof.

8. DEFAULT OF RAILWAY COMPANY UNDER FIRST MORTGAGE. That the defendant The Union Pacific Railway Company made default in the payment of all of the

interest, and of the coupons representing such interest, which became due upon its said First Mortgage Bonds on the first day of July ,1894, although payment of interest due on that date was duly demanded by holders of said bonds, and said default continued in whole until the 27th day of November, 1894, when an amount equal to the face of the interest coupons matured July 1st, 1894, was paid to the holders thereof, but no interest then accrued upon said coupons was paid, although payment of such accrued interest was demanded, and all of the interest upon said defaulted coupons matured on the 1st day of July, 1894, remains unpaid, together with interest thereon from the said 27th day of November, 1894. And the said the Union Pacific Railway Company made default in the payment of each subsequent semi-annual installment of interest which fell due upon said Bonds at the times of the maturity thereof, respectively although payment of each of said installments was duly demanded; but said semi-annual installments of interest were, under orders of this Court, paid by the defendant Receivers, together with interest upon such installments, as follows: the installment due on the 1st day of January, 1895, was paid by the said Receivers on the 20th day of January, 1896; the installment due on the 1st day of July, 1895, was paid by the said Receivers on the 8th day of May, 1896; the installment due on the 1st day of January, 1896, was paid by the said Receivers on the 25th day of September 1896; the installment due on the 1st day of July, 1896, was paid by the said Receivers on the 19th day of November, 1896, and the installment due on the 1st day of January, 1897, was paid by the said Receivers on the 2d day of March, 1897, and the installment due on the 1st day of July, 1897, was paid by the said Receivers on the 26th day of July, 1897.

That of the said bonds secured by said first mortgage of November 1st, 1865, six thousand four hundred and seventy five (6,475), in the principal amount of six million four hundred and seventy-five thousand dollars ($6,475,000), became due and payable on the first day of January, 1896, and payment thereof was duly demanded; and that of said bonds one thousand five hundred and ninety-eight (1,598), in the principal amount of one million five hundred and ninety-eight thousand dollars ($1,598,000), became due and payable on the first day of January, 1897, and payment thereof was duly demanded; and that of said bonds one thousand

nine hundred and twenty (1,920), in the principal amount of one million nine hundred and twenty thousand dollars ($1,920,000), became due and payable on the first day of July, 1897.

That the said The Union Pacific Railway Company made default in the payment of the said principal amounts of said bonds which matured on the first day of January, 1896, and on the first day of January, 1897, and on the first day of July, 1897, as aforesaid; and that the same remain due and unpaid, and the following amounts are now due and payable at the date of this decree for unpaid interest on the said coupons which matured July 1st, 1894, and for principal of said outstanding First Mortgage bonds already matured and accrued interest thereon, viz:

| | |
|---|---|
| For unpaid interest on coupons of July 1, 1894 | $19,877.17 |
| For principal of bonds matured | 9,993,000.00 |
| For accrued interest on matured principal | 46,634.00 |
| Total | $10,059,511.17 |

That certain coupons pertaining to some of said First Mortgage bonds have never been presented for payment and remain unpaid, and certain semi-annual accrued interest upon said First Mortgage bonds now matured has never been demanded or collected by the holders thereof, and such unpresented and unpaid coupons and such unpaid interest upon said unpresented matured bonds amount to the sum of $102,930.

9. Issue of Subsidy Bonds of the U. S. Amount and Description Thereof. That, beginning on February 1st, 1866, under and in pursuance of the legislation aforesaid there were issued and delivered by the Secretary of the Treasury of the United States to the said The Union Pacific Railroad Company bonds of the United States (hereinafter termed Subsidy Bonds), of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest, payable semi-annually in lawful money and legal tender of the United States, to the amount of $27,236,512, all of which bonds were of the tenor and effect described in said Acts of the Congress of the United States, approved July 1st, 1862, and July 2d, 1864, and were issued and delivered by the said Secretary of the Treasury to the said Railroad Company as, in the manner, and upon the

conditions prescribed in said Acts, and the issue of said bonds and the delivery thereof, to the said Company did, by force of law, *ipso facto* constitute a mortgage on the whole line of railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, including all the rights, franchises and appurtenances thereunto belonging, and in consideration of which said bonds were issued, which said lien of the United States was, by the provisions of said Act of Congress of July 2d, 1864, made subordinate to the lien of first mortgage bonds authorized to be issued upon the railroad and telegraph lines of said The Union Pacific Railroad Company to an amount not exceeding the amount of the said subsidy bonds of the United States on its road property and equipments, except as to such provisions of the sixth section of said Act of July 1st, 1862, which reserved to the United States a preference in the use of the said railroad and telegraph line for the transmission of despatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service.

That the Subsidy bonds of the United States so issued and delivered by the Secretary of the Treasury of the United States to the Union Pacific Railroad Company, in pursuance of the Acts of the Congress of the United States aforesaid, bore respectively, the dates of issue, were issued in the respective amounts, matured and will mature at the respective dates, and bore interest from the respective dates as appears in the following tabulated statement thereof, to-wit:

| Maturity of Bonds | Date of Issue | To whom delivered | Commencement of Interest | Amount | Total |
|---|---|---|---|---|---|
| February 1, 1896 | Feb. 1, 1866 | | Feb. 1, 1866 | 640,000 | |
| | May 7, 1866 | | May 7, 1866 | 400,000 | |
| | June 26, 1866 | | June 26, 1866 | 640,000 | |
| | July 13, 1866 | | July 13, 1866 | 320,000 | |
| | Aug. 9, 1866 | | Aug. 9, 1866 | 560,000 | |
| | Sep. 11, 1866 | | Sep. 11, 1866 | 720,000 | |
| | Oct. 15, 1866 | | Oct. 13, 1866 | 560,000 | |
| | Nov. 8, 1866 | | Nov. 7, 1866 | 480,000 | |
| January 1, 1897 | Jan. 9, 1867 | | Jan. 8, 1867 | 560,000 | |
| | June 11, 1867 | | June 10, 1867 | 640,000 | |
| | July 6, 1867 | | July 6, 1867 | 640,000 | |
| | Aug. 29, 1867 | | Aug. 29, 1867 | 560,000 | |
| | Oct. 2, 1867 | | Oct. 2, 1867 | 560,000 | |
| | Nov. 5, 1867 | | Nov. 5, 1867 | 560,000 | |
| | Dec. 13, 1867 | | Dec. 13, 1867 | 320,000 | |
| January 1, 1898 | Jan. 28, 1868 | | Jan. 27, 1868 | 937,000 | |
| | May 18, 1868 | | May 16, 1868 | 960,000 | |
| | May 19, 1868 | | May 18, 1868 | 960,000 | |
| | June 12, 1868 | | June 12, 1868 | 960,000 | |
| | June 17, 1868 | | June 18, 1868 | 960,000 | |
| | July 23, 1868 | | July 22, 1868 | 960,000 | |
| | July 25, 1868 | | July 24, 1868 | 1,841,000 | |
| | Aug. 12, 1868 | | Aug. 11, 1868 | 640,000 | |
| | Aug. 29, 1868 | | Aug. 28, 1868 | 640,000 | |
| | Sep. 7, 1868 | | Sep. 7, 1868 | 1,280,000 | |
| | Sep. 23, 1868 | | Sep. 23, 1868 | 640,000 | |
| | Oct. 22, 1868 | | Oct. 21, 1868 | 640,000 | |
| | Nov. 20, 1868 | | Nov. 19, 1868 | 640,000 | |
| | Dec. 7, 1868 | | Dec. 7, 1868 | 1,280,000 | |
| | Dec. 15, 1868 | | Dec. 14, 1868 | 640,000 | |
| | Dec. 17, 1868 | | Dec. 16, 1868 | 640,000 | |
| | Dec. 24, 1868 | | Dec. 23, 1868 | 640,000 | |
| | Dec. 24, 1868 | | Dec. 24, 1868 | 640,000 | |
| | July 15, 1870 | | Nov. 21, 1868 | 1,512 | |
| January 1, 1899 | Jan. 29, 1869 | | Jan. 29, 1869 | 640,000 | |
| | Feb. 10, 1869 | | Feb. 10, 1869 | 1,280,000 | |
| | July 22, 1869 | | July 16, 1869 | 640,000 | |
| | Nov. 10, 1869 | | July 16, 1869 | 437,000 | |
| | July 14, 1870 | | July 16, 1869 | 160,000 | |
| Total | | | | | 27,226,512 |

That said subsidy bonds so issued by the United States to said railroad company were by said railroad company sold, and the proceeds of such sales were by said railroad company applied to its own use in aid of the construction and equipment of its said railroad.

10. LIEN OF THE SUBSIDY BONDS: ITS EXTENT AND RANK DEFINED. That the provisions of the original, amended and supplemental acts of Congress hereinbefore

and in the answer of the defendant the United States of America referred to, and the issue and delivery of said Subsidy Bonds, as provided in said Acts of Congress, create and constitute a mortgage and lien, as in said Acts of Congress provided, in favor of the United States, to secure the repayment to the United States of the amount of said Subsidy Bonds so issued and delivered to said The Union Pacific Railroad Company, together with all interest thereon which shall have been paid by the United States, which said mortgage and lien are herein designated the Subsidy Lien.

Said Subsidy lien is junior, inferior and subordinate to the title and right of the American Loan and Trust Company, as trustee of the Equipment Trust Indenture of The Union Pacific Railway Company, dated October 1st, 1887, to the extent and so far as the said Indenture affects the portion of the equipment therein embraced which is herein decreed to pertain to the mortgaged premises covered by said First Mortgage of November 1st, 1865, and to the extent of the purchase money indebtedness herein found to be outstanding under said Equipment Trust Indenture; and said subsidy lien is junior, subordinate and inferior to the lien of the Omaha Bridge Mortgages of April 1st, 1871, and September 27th, 1871, and of said Omaha Bridge Renewal Mortgage of October 1st, 1885, as to all of the premises in said Bridge Mortgages embraced and to the extent of the indebtedness outstanding and unpaid secured by the said Bridge Mortgages, as hereinafter found; and said Subsidy Lien is subordinate, junior and inferior to the lien of the said First Mortgage of November 1st, 1865, and to the lien of the bonds secured by said First Mortgage, as to all the railroad, equipments and rolling stock, telegraph lines, premises, franchises, rights, functions, immunities and appurtenances thereunto belonging, lands and property hereinbefore in Article 7 hereof described as embraced in and covered by said First Mortgage; subject, however, to the right of the Government to have the preference at all times in the use at fair and reasonable rates of compensation not to exceed the amount paid by private parties for the same kind of service, of the said telegraph line and railroad for the transmission of despatches over said telegraph line and the transportation of mails, troops and munitions of war,

supplies and public stores upon said railroad for the Government whenever required by any department thereof.

11. MATURITY OF SUBSIDY BONDS. That of said Subsidy Bonds of the United States so issued and delivered to the said The Union Pacific Railroad Company by the Secretary of the Treasury of the United States $4,320,000 of the principal thereof matured on February 1st, 1896, and the same, together with all interest then due thereon were then paid by the United States; and $3,840,000 of the principal thereof matured on January 1st, 1897, and the same, together with all interest then due thereon, were then paid by the United States.

$19,076,512 of the said Subsidy Bonds of the United States remain outstanding and unpaid, of which $15,919,512 will mature on January 1st, 1898, and $3,157,000 will mature on January 1st, 1899.

That all of the interest on all of said Subsidy Bonds of the United States has been paid by the United States as the same has from time to time matured.

12. PAYMENTS ON SUBSIDY DEBT BY GOVERNMENT TRANSPORTATION. That sums of money have been paid to and received by the United States, and further sums of money, representing compensation earned by The Union Pacific Railroad Company and the said The Union Pacific Railway Company and the said Receivers for the performance of service for the Government, have been lawfully retained by the United States, and a portion of the sums so received and retained have been credited to what is known as the "Bond and Interest Account," and said portion of the said sums so credited aggregated on the 30th of April, 1897, the amount of $16,262,140.53, which last-mentioned amount the said The Union Pacific Railroad Company and its said successor The Union Pacific Railway Company were entitled to have credited and which have been by the United States credited towards and in partial repayment of the interest paid by the United States upon said Subsidy Bonds; and further sums representing such earnings have been likewise lawfully retained by the United States, which have been credited to said Union Pacific Railway Company or with which said company is entitled to be credited, but the extent whereof is incapable of exact statement at the date of this decree, but such credits and the current additions to the Sinking Fund hereinafter

mentioned have not exceeded the accumulation of the subsidy debt.

The total amount of indebtedness on account of said subsidy bonds, matured and unmatured, for principal and interest, after deducting the said amount received by the United States upon said interest account was on April 1st, 1897, as nearly as such account can be now stated,

| | |
|---|---|
| For principal | $27,236,512 |
| For balance of interest account | 30,525,918 |
| Total | $57,762,432 |

13. SINKING FUND: AMOUNT THEREOF. That under and in pursuance of the provisions of the Act of Congress of the United States, approved May 7th, 1878, of said sums of money so paid to and received by the United States and of said sums of money representing compensation for the performance of service to the Government so retained by the United States, $19,217,713.40 had, on the 31st day of December, 1896, been received in the Treasury of the United States and in part invested by the Secretary of the Treasury in certain bonds which are held in and constitute in part the Sinking Fund established by said last-mentioned Act of Congress, so far as the same relates to The Union Pacific Railroad Company and its successor The Union Pacific Railway Company, and so far as the same is known as the United States Union Pacific Sinking Fund. That said United States Union Pacific Sinking Fund consists of cash and of bonds, and the bonds therein are as shown in the following tabulated statement, which statement also shows which of said bonds are not due and which of said bonds are due and the rates of interest, dates of maturity, dates when interest is payable and dates of last payment of interest as to each class of bonds embraced in said Sinking Fund:

## *Statement of Bonds in the United States Union Pacific Sinking Fund.*

| Bonds | Not Due | Due But Unpaid | Rate of Interest | Maturity of Bond | Interest Payable | Date of last payment of Interest |
|---|---|---|---|---|---|---|
| | | | (per cent) | | (1st day of) | |
| U. S. 5% of 1904 | $915,750 | | 5 | Feb. 1, 1904. | Feb. May. Aug. Nov | Feb. 1, 1897. |
| U. S. 6% of 1898 | 523,000 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| U. S. 6% of 1899 | 41,000 | | 6 | Jan. 1, 1899. | Jan'y July | Jan. 1, 1897. |
| First Mortgage Bonds: | | | | | | |
| Union Pacific due Jan'y 1, 1896 | | $929,000 | 6 | Jan. 1, 1896. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1897 | | 350,000 | 6 | Jan. 1, 1897. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due July 1,1897 | 473,000 | | 6 | July 1, 1897. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1898 | 1,534,000 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due July 1, 1898 | 2,536,000 | | 6 | July 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1899 | 545,000 | | 6 | Jan. 1, 1899. | Jan'y July | Jan. 1, 1897. |
| Central Pacific due Jan'y 1, 1898 | 2,229,000 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Kansas Pacific due Aug. 1, 1895 | | 549,000 | 6 | Aug. 1, 1895. | Feb. Aug | Aug. 1, 1895. |
| Kansas Pacific due June 1, 1896 | | 929,000 | 6 | June 1, 1896. | June Dec | Dec. 1, 1894. |
| Sioux City and Pacific due Jan'y 1, 1898 | 716,500 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Central Branch due May 1, 1895 | | 1,025,000 | 6 | May 1, 1895. | May Nov | Nov. 1, 1893. |
| Western Pacific due July 1, 1899 | 350,000 | | 6 | July 1, 1899. | Jan'y July | Jan. 1, 1897. |
| | 9,863,250 | 3,782,000 | | | | |
| Total Bonds in Fund— | | 13,645,250 | | | | |

That the amount of uninvested cash held in as a part said United States Union Pacific Sinking Fund on April h, 1897, is the sum of $3,945,239.89, which said amount now held in and as a part of said Sinking Fund, together th, and subject to be increased by, certain further amonts presenting earnings for the performance of service for e Government credited and currently to be credited to e said Sinking Fund, the extent of which amounts is capable of exact statement as of the date of this decree.

That said United States Union Pacific Sinking Fund established, and as the same exists, is applicable to the ayment and satisfaction of the Subsidy Bonds so issued d delivered by the United States to the Union Pacific ailroad Company and of all the interest paid by the United tates thereon and not reimbursed, as and upon the conitions provided in said Act of May 7th, 1878.

14. DEFAULT OF RAILWAY COMPANY IN RESPECT OF UBSIDY BONDS. That no part of the cost or expense of he payment of said subsidy bonds of the United States, which have been paid as hereinbefore found, has been contributed by the said The Union Pacific Railroad Company nor by the defendant herein The Union Pacific Railway Company, except as herein stated, and no payment has been made nor security given on account of the principal of said subsidy bonds by said original or successor company (otherwise than as such security has resulted from the operation of law) except such security as is constituted by the Sinking Fund hereinbefore mentioned.

That the defendant The Union Pacific Railway Company has made default in the repayment to the United States of the amount of the Subsidy Bonds, so issued and and delivered to the said The Union Pacific Railroad Company, which matured on the first day of February, 1896, and in the payment of the amount of the said Subsidy Bonds so issued and delivered which matured on the first day of January, 1897, and in the repayment to the United States of all of the interest paid by it upon said subsidy bonds which have so matured at the dates aforesaid, except to the extent of the repayment and reimbursement of such interest by the application of the amounts paid to and retained by the United States and credited to said Bond and Interest Account as hereinbefore found.

That the indebtedness of the said The Union Pacific

Railway Company secured by said Subsidy Lien and which has matured and is now due to the United States for the repayment of the amounts paid by the United States upon the principal of said matured Subsidy Bonds, and for repayment of the interest paid by the United States upon said matured Subsidy Bonds in excess of the amount of said Bond and Interest Account heretofore applied as aforesaid to the payment of said interest, is as follows:

| | |
|---|---|
| For the principal of subsidy bonds matured February 1st, 1896 | $4,320,000.00 |
| For interest paid thereon and unreimbursed on April 30, 1897 | 5,401,138.83 |
| For the principal of subsidy bonds matured January 1st, 1897 | 3,840,000.00 |
| For interest paid thereon and unreimbursed on April 30, 1897 | 4,928,490.35 |
| Total amount of matured principal and unreimburesd interest on April 30, 1897 | $18,489,629.18 |

15. APPEARANCE OF U. S. That the said United States of America duly entered their appearance and became parties defendant to this cause by action of the Attorney-General of the United States duly had and taken on their behalf, pursuant to the authority provided by law and given by the direction of the President of the United States aforesaid.

16. LAND GRANT AND INCOME BONDS AND MORTGAGE: AMOUNT AND LIEN THEREOF. That the Union Pacific Railroad Company, under and in pursuance of the power and authority conferred upon it by the Acts of Congress aforesaid, and for the purpose of paying certain outstanding land grant mortgage and income bonds made, executed and delivered its mortgage indenture known as its Sinking Fund Mortgage, dated on the 18th day of December, 1873, to The Union Trust Company of New York, Trustee, wherein and whereby, for the purpose aforesaid and for the purpose of securing the payment of the principal and interest of the coupon bonds of said company amounting to the sum of Sixteen million dollars in gold coin of the United States, or three million two hundred thousand pounds British Sterling money, said coupon

nds being in number 16,000, and for the sum of one
ousand dollars gold coin of the United States, or two
ndred pounds English Sterling money numbered from
to 16,000, inclusive, the principal being payable on the
t day of September, 1893, in gold coin, unless sooner
deemed, with interest at the rate of eight per cent per
nnum current money of the United States, or seven per
nt British Sterling money, at the option of the holder,
ayable on the 1st day of March and the 1st day of Sep-
mber in each year, the said Union Pacific Railroad Com-
any granted, bargained, sold, released, conveyed and
onfirmed to The Union Trust Company and its successor
s trustee, all the right, title, estate and interest of the
aid Railroad Company of, in and to its railroad, extend-
ng from the City of Omaha, in the State of Nebraska, to
point about five miles west of the City of Ogden, in the
Territory of Utah, and its appurtenances, together with
ll its lands, tenements, hereditaments, rights of way and
easements acquired or owned, or which should be there-
after acquired or owned, for the purpose of a right of way
for a single, double or other track, railroad, and for depots,
engine houses, car houses, station houses, warehouses, ma-
chine shops, superstructures, erections, fixtures and ap-
purtenances and property necessary or convenient for the
use of said railroad; also all the rails, depots, yards, engine
houses, car houses, warehouses, round houses, machine
shops, work shops and other structures and fixtures of the
said party of the first part, and also all goods and chattels
then owned, or which should thereafter be owned or ac-
quired by said party of the first part, necessary or con-
venient to said railroad, or the running and operation of
the same, or used or employed therein, or in connection
therewith, subject, however, to said conveyance in trust
and mortgage so made to the said Morgan and Ames, and
also to the said lien or mortgage of the United States;
also all and singular the lands granted to said Railroad
Company by the said Acts of Congress, and also all the
estate, right, title, interest, claim, and demand whatsoever,
at law or in equity, of, in or to the same, or any part or
parcel thereof, which the said Railroad Company then
held, owned, or was entitled to, or thereafter might or
should acquire, have, hold, own, or be or become entitled
to by force or virtue of said Acts of Congress, saving and

excepting all parts and parcels of said land which should have been, previous to the execution of this said mortgage, conveyed or contracted to be conveyed by said Railroad Company to purchasers thereof.

That under the terms and provisions of said Sinking Fund Mortgage and in accordance therewith said Railroad Company issued its bonds secured thereby in the total amount of 16,000,000, which bonds were duly certified by said trustee and were sold by said Railroad Company and the proceeds derived from such sale were by it applied according to the terms and provisions of said mortgage.

That there had been, on August 9th, 1893, paid and canceled of said bonds so issued under said mortgage $11,838,000 of the principal thereof together with the interest thereon, and on said last-mentioned date said Railway Company entered into an agreement with said Union Trust Company of New York, as trustee, providing for the extention of the time of payment of said bonds then remaining unpaid until the first day of September, 1899. That there are now outstanding of said bonds secured by said mortgage of December, 18th, 1873, 3,738 bonds, and that said company is in default in the payment of the interest on said bonds which matured on the first day of September, 1896, and in the payment of each and every installment of interest on said bonds thereafter matured, and that the amount of the outstanding principal of said bonds and of the matured interest thereon is as follows:

| | |
|---|---|
| Principal of said Sinking Fund Bonds outstanding | $3,738 000 |
| Unpaid Coupons thereon at their face | 298,400 |

That said Sinking Fund Mortgage is, to the extent that it includes any railroad, property and franchises embraced in said First Mortgage of November 1st, 1865, and in said Omaha Bridge Mortgages of April 1st, 1871, and September 27th, 1871, and in said Omaha Bridge Renewal Mortgage of October 1st, 1885, a lien subject, inferior and subordinate to the right and title of the American Loan and Trust Company, Trustee of said Equipment Trust indenture of October 1st, 1887, and to the lien of said First Mortgage of November 1st, 1865, and to the lien of the said several Omaha Bridge Mortgages and to the Subsidy Lien of the United States, and said Sinking Fund Mortgage is a first and paramount lien upon all the lands

described in said mortgage which were derived from the land grant to the Union Pacific Railroad Company.

And the Court hereby reserves for other or further proceedings and decree all rights and equities of the trustee of the said Sinking Fund Mortgage and of the holders of bonds secured thereby not herein determined or adjudged and not barred and foreclosed by the sale hereinafter provided to be made.

17. OMAHA BRIDGE MORTGAGES; AMOUNT, EXTENT AND RANK DEFINED. That the Union Pacific Railroad Company under and in pursuance of the power and authority conferred upon it by the said Acts of Congress of the United States approved July 1st, 1862, and July 2nd, 1864, and the Act of Congress approved February 24th, 1871, built and constructed as a part of its said line of railroad said bridge across the Missouri River between Omaha, in the State of Nebraska, and Council Bluffs, in the State of Iowa, together with the approaches thereto and appurtenances thereof, and said Railroad Company for the purpose of purchasing and acquiring the lands and materials necessary for the construction of the said bridge and its approaches and connecting lines, and for constructing the same, and pursuant to the authority of said Act of February 24th, 1871, and to due corporate action, issued its Bridge Bonds, each for the sum of one thousand dollars United States gold coin, or two hundred pounds British sterling money, the principal of which was payable on the first day of April, 1896, unless sooner redeemed, with interest in the meantime from the first day of April, 1871, on the principal sum at the rate of eight per centum per annum payable by half-yearly installments of forty dollars in United States gold coin, or eight pounds five shillings and nine pence British sterling money, each on the first day of October and first day of April in each year, upon presentation of the coupons attached to the said bonds; and, for the purpose of securing the payment of said bonds and interest, said Railroad Company, pursuant to like authority of law and corporate action, made, executed and delivered to John Edgar Thompson, John Pierpont Morgan and Elisha Atkins its mortgage dated on the first day of April, 1871, wherein and whereby it granted, bargained, sold, assigned, transferred set over, enfeoffed, conveyed and confirmed to said Trustees and to their heirs and successors,

and the survivors and survivor of them and the heirs of such survivor, all and singular the said bridge over the River Missouri between Omaha and Council Bluffs, and the approaches thereof and appurtenances belonging thereto, including all parts and portions of the said bridge then constructed or thereafter to be constructed and the depots at Council Bluffs and Omaha aforesaid, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the neighboring lines, including in said conveyance as well the lines and tracks then constructed or those which might thereafter be constructed, and also all estates, terms and rights of way for the said bridge approaches and appurtenances as well, then held by the Company as to be thereafter acquired by it, and all the rights and privileges of the Company in, or to the said bridge, approaches or appurtenances, or touching and concerning or appertaining to the maintenance, use and occupation thereof.

That on or about the 27th day of September, 1871, said The Union Pacific Railroad Company made, executed and delivered to the said John Edgar Thompson, John Pierpont Morgan and Elisha Atkins, as trustees its supplemental mortgage, bearing said last-mentioned date, in which supplemental mortgage it was provided, among other things, that all the said bonds should bear interest at the rate of two-fifths of one per cent. per annum, in addition to the annual eight per cent. interest provided for in the said mortgage dated April 1st, 1871, which said interest of two-fifths of one per cent. should be paid in a gross of ten per cent. upon the nominal amount of the bond, when the principal of the bond became payable under the terms or conditions of said indenture, excepting always that those bonds which should be drawn and redeemed at ten per cent. per annum before maturity by the Sinking Fund should not carry said interest at two-fifths of one per cent.; and the trustees under said mortgage were authorized and empowered to retain and deduct and to pay and discharge such installment of interest out of any funds or moneys of the company coming into their hands.

That said bonds so issued and secured by said Bridge Mortgage of April 1, 1871, and said supplemental mortgage of September 27th, 1871, are outstanding and unpaid in the face amount of $392,000, and that all said bonds

matured and became due on or prior to April 1st, 1896, and that under the terms of the said mortgage and said supplemental mortgage the principal amount due on said bonds is the face amount thereof and ten per cent. in addition thereto, being the amount of $431,000, together with interest at the rate of six per cent. per annum from the first day of April, 1897, to which date the interest upon said bonds has been paid.

That the said John Edgar Thompson and Elisha Atkins have since died, and the said John Pierpont Morgan, by survivorship, and Edwin F. Atkins, by due appointment, are now the Trustees under the said Bridge Mortgage of April 1st, 1871, and the supplemental indenture of September 27th, 1871.

Said Omaha Bridge Mortgage of April 1st, 1871, and said supplemental indenture of September 27th, 1871, subject only to the right and title of The American Loan & Trust Company, trustee of the Equipment Trust Indenture of October 1st, 1887, as hereinbefore found, constitute a first and paramount lien on the railroad, bridge and premises therein embraced, and the sale hereafter provided to be made shall be made subject to the said Bridge Mortgages and the liens thereof and the rights of the holders of the bonds secured thereby.

18. OMAHA BRIDGE RENEWAL MORTGAGE; AMOUNT AND RANK DEFINED. That the said The Union Pacific Railway Company thereafter, pursuant to like authority of law and to due corporate action, did, for the purpose of funding and renewing the debt then remaining unpaid secured by said Bridge Mortgages of the Union Pacific Railroad Company of April 1st, 1871, and September 27th, 1871, issue its certain bonds of one thousand dollars each, dated the first day of October, 1885, payable on the first day of October, 1915, in gold coin of the then present weight and fineness, and bearing interest at the rate of five per centum per annum, payable semi-annually on the first day of October and April in each year, in like gold coin, on presentation and surrender of the coupons therefor annexed to said bonds, and, likewise, pursuant to law and due corporate action, the said The Union Pacific Railway Company, in order to secure the payment of the principal and interest of said last-mentioned bonds, made, executed and delivered to the Central Trust Company of New York,

as Trustee, its mortgage or deed of trust, dated on the first day of October, 1885, and known as its Omaha Bridge Renewal Mortgage, whereby the said Railway Company granted, bargained, sold, assigned, transferred and conveyed unto the said Central Trust Company of New York, as Trustee, and to its successors and assigns, all and singular the bridge, approaches and appurtenances thereto over the Missouri River, between Council Bluffs, Iowa, and Omaha, Nebraska, mentioned and described in said Act of Congress, approved February 24th, 1871, together with the rents, earnings, issues, tolls, incomes and profits thereof, including all parts and portions of said bridge then constructed, or thereafter to be constructed, and the depots at Council Bluffs and Omaha, aforesaid, and the railroad thereover, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the lines of any railroads that were then or should thereafter be constructed to the Missouri River at Council Bluffs, Iowa, or Omaha, Nebraska, and also all the estates, lines, rights of way, as well then held by the Company as to be thereafter acquired by it, and all the rights and privileges of the Company of, in or to the said bridge, approaches and appurtenances, or touching, concerning or appertaining to the maintenance, use and occupation thereof, and also all and singular the franchises then owned, possessed or acquired, or which should thereafter be owned, possessed or acquired by the said Railway Company in respect of said bridge, approaches or appurtenances thereto and the railroad thereover.

That there were certified and delivered to the said Railway Company $1,056,000 of said bonds, and of said bonds so certified and delivered $589,000 were negotiated and sold by said company and $145,000 were by said company pledged and remain pledged to secure certain of its indebtedness; and $322,000 of said bonds were undisposed of by said company and remained in its possession, and are now in the hands of the said receivers and have never been issued and are not outstanding, and the said defendants receivers and the defendant The Union Pacific Railway Company are hereby perpetually enjoined from issuing, negotiating or delivering the same, and, in the event of the confirmation of any sale of the railroad prop-

rty made as herein provided, they are hereby further ordered and directed to cancel the said bonds.

That the amount of the outstanding principal of said bonds secured by said Omaha Bridge Renewal mortgage of October first, 1885, and the amount of the unpaid coupons on said outstanding bonds are as follows:

| | |
|---|---|
| Principal amount of bonds sold and disposed of by said Railway Company | $734,000 |
| Interest thereon from April 1st, 1894, to April 1st, 1897 | 110,100 |
| Total | $844,100 |

Said Omaha Bridge Renewal Mortgage of October 1st, 1885, and the bonds oustanding and unpaid secured thereby, constitute a lien on the railroad, bridge and premises, therein embraced, subject only to the right and title, as hereinbefore defined, of The American Loan and Trust Company, as trustee of the said Equipment Trust Indenture of October 1st, 1887, and to the lien of the said Omaha Bridge Mortgages of April 1st, 1871, and September 27th, 1871, and superior and paramount to the liens, claims or charges of any party to this cause, except the trustees of said Omaha Bridge Mortgages; and the sale hereafter provided to be made, shall be made subject to the said Omaha Bridge Renewal Mortgage, and the lien thereof and the rights of the holders of the bonds secured thereby.

19. INSOLVENCY OF RAILWAY COMPANY; MORTGAGED PREMISES INDIVISIBLE. That in addition to the sums hereinbefore found to be due from and owing by said defendant Railway Company, said Company is indebted in large sums, of which the payment is overdue, and it has made default in the payment thereof and is unable to pay the same and is wholly insolvent, and it is for the best interests of all concerned that all the said railroad properties and franchises, rights, functions, immunities and appurtenances of the said railway company embraced in and covered by the lien of the complainants should be sold and that the provisions hereof be made for the payment of the indebtedness of said railway company according to the respective liens and equities of the holders thereof. That the railroad, telegraph, appurtenances, rolling stock, equipment and other property and franchises, rights, functions, im-

munities and appurtenances of said defendant Railway Company embraced in said first mortgage or upon which said First Mortgage is a lien are indivisible and so situated and are of such a nature that the same cannot be sold in parcels without great injury to all the parties in interest and that it is expedient that the same shall be sold as an entirety as hereinafter provided.

20. PAYMENT DECREED. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant The Union Pacific Railway Company pay, or cause to be paid, within twenty days after the entry of this decree to the said F. Gordon Dexter and Oliver Ames, 2nd, trustees, for the use and benefit of the holders of the First Mortgage Bonds of the Union Pacific Railroad Company issued under and secured by said First Mortgage of November 1st, 1865, the amount hereinbefore found to be due for principal and interest on said First Mortgage Bonds and coupons, namely, the sum of $10,162,441.17, with interest thereon from the date of this Decree to the date of payment.

In case the said amount shall be paid or caused to be paid by The Union Pacific Railway Company as herein decreed, then any of the parties to this cause may apply to this Court for such further relief and for such further directions as may be just and equitable.

21. FORECLOSURE AND SALE ORDERED. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that in default of such payment by the defendant the said The Union Pacific Railway Company, or by some one claiming under it, or by some one for its account, or by some of the defendants herein, within the time directed as aforesaid, all the railroad, telegraph, franchises, rights, functions immunities and appurtenances to the same belonging rolling stock and property of every kind and description embraced in and covered by said First Mortgage of November 1st 1865, shall be sold as hereinafter directed, and all the right, title, estate, interest and equity of redemption of the said defendant The Union Pacific Railway Company and of all persons claiming, or to claim, under it and of F. Gordon Dexter and Oliver Ames, 2nd, Trustees and of the United States of America and of each and every defendant in this cause, of, in or to the said railroad, telegraph franchises, rolling stock and property, and every part and parcel thereof, embraced in and covered by said First Mortgage of Novem-

r 1st, 1865, shall be forever absolutely barred and fore-
osed, saving only the rights and title of the American
oan and Trust Company, trustee of the said Equipment
rust Indenture of October 1st, 1887, and the rights and
ens of the trustees of the Omaha Bridge Mortgages of
pril 1st, 1871, and September 27th, 1871, and of the Omaha
ridge Renewal Mortgage of October 1st, 1885, and saving
nd excepting the right of the Government to have the
reference at all times in the use at fair and reasonable
ates of compensation not to exceed the amounts paid by
rivate parties for the same kind of service over said tele-
graph line and railroad for the transmission of despatches
and the transportation of mails, troops, munitions of war,
supplies and public stores for the Government whenever
required by any department thereof.

The said property, covered by and embraced in said First Mortgage of November 1st, 1865, as the same is hereinbefore described and defined, shall be sold upon the conditions and in the manner hereinafter provided and directed, at public auction to the highest bidder or bidders upon the mortgaged premises, at the freight station of The Union Pacific Railway Company in the City of Omaha in the State of Nebraska on a day or days to be fixed by the Special Master hereinafter appointed, and public notice of such sale and the time and place thereof, together with the manner and the terms upon which the said sale is to be conducted shall be given by the said Special Master by advertisement, which shall describe briefly the property to be sold, the time and place when and where the sale is to take place, and the conditions upon which it is to be conducted; which advertisement shall be published at least once a week for the term of four successive weeks preceding the day of sale, in at least one newspaper in each of the following cities—namely, New York City, New York; Boston, Massachusetts; Omaha, Nebraska; Denver, Colorado; Cheyenne, Wyoming and Salt Lake City, Utah.

The Receivers shall file with the Clerk of the Court, at Omaha, within ten days after the entry of this decree, an approximate statement, as nearly correct as they are able to make the same, of the amount of moneys in their hands, the amount of moneys owing to them, all their liabilities, fixed and contingent, resulting from the operation of the mortgaged premises, as they will be at the time

of the sale, and the Master shall insert a brief summary of this statement in his notice of sale.

22. MANNER AND TERMS OF SALE. Said sale shall be made in the following manner and upon the following terms:

Said property shall be sold as an entirety and in one parcel.

The Special Master shall have the power and right to postpone the said sale from time to time, and may, without further notice, proceed with the said sale on any day to which the sale may have been adjourned, and may, at his option, give such further notice of sale, in addition to the notice above described, as he may think proper.

The Special Master shall receive no bid from any one offering to bid who shall not have deposited with him at his office in Omaha, Nebraska, at least five days before the date of the sale mentioned in the Special Master's published notice, as a pledge that he will make good his bid in case of its acceptance, the sum of $2,000,000, at least one-half of which shall be cash and the other half of which may be first mortgage bonds secured upon this property.

The Special Master shall accept no bid for said railroad franchises and property less than the sum of $50,637,435.00, and unless such sum shall be bid the Special Master may adjourn the sale, and apply to the Court for further instructions.

Upon the acceptance of any bid, the person or persons making the same shall forthwith deposit with the Special Master, on account thereof, a further sum, in cash or first mortgage bonds secured upon this property, which together with those which he or they have already deposited as a pledge shall equal fifteen per cent. (15%) of the accepted bid.

In case any bidder shall fail to make good his bid upon its acceptance by the Special Master by making within five days after such acceptance the additional deposit with or subject to the order of the Master as hereinbefore provided, or, after the confirmation of said sale, shall fail to pay as hereinafter provided, the balance due upon his said bid in consumation of his purchase, then the sums in cash and bonds deposited by such bidder or purchaser, as hereinbefore provided, shall be forfeited as a penalty for such failure, and shall be applied towards payment of the expenses of a resale and towards making good any deficiency or loss

case the property shall be sold at a less price upon such sale, and to any other and further purpose which the Court may direct.

Any party to this cause or any holder or holders of any said first Mortgage bonds may bid and purchase at such sale.

If any sale for which a deposit has been made shall not be confirmed by the Court, such deposit shall be returned to the bidder, and the deposit of any unsuccessful bidder shall be returned to him when a bid has been accepted.

23. PAYMENTS BY THE PURCHASER. The purchaser whose bid shall have been accepted by the Special Master at said sale shall make payments in cash, or in cash and first mortgage bonds of the sum remaining due upon his said bid after the application thereto of the amounts theretofore deposited by him, as follows:

Twenty-five per cent. (25%) of said amount so remaining due on said bid shall be paid within thirty days after the confirmation of the sale; a further twenty-five per cent. (25%) of said amount shall be paid within forty days after such confirmation; a further twenty-five per cent. (25%) of said amount shall be paid within fifty days after such confirmation; and a further twenty-five per cent. (25%) of said amount shall be paid within sixty days after such confirmation: *Provided*, however, that the purchaser shall have the right to anticipate all or either of said payments by making the same, or any of them, at an earlier time, or earlier times, than herein fixed.

Said First Mortgage Bonds, to the extent that they shall be tendered to the Master in payment of said bid, shall be accepted and taken by him in such payment at the par value thereof, together with interest unpaid and accrued thereon to the date of this Decree, and such purchaser shall be credited therfor, on account of the purchase price, such sum in cash as shall be represented by the principal of said bonds and such unpaid and accrued interest thereon, and the Master shall stamp such bonds paid, and cancel them.

Such part of the purchase price as shall not be paid in said First Mortgage bonds shall be paid in cash.

Any deposits or payments required by the terms of this decree to be made in cash may be made by delivery of a certified check or checks or a certificate or certificates of deposit

upon any national bank or trust company in favor of or to the order of the said Special Master and satisfactory to him.

The proceeds of the accepted bid shall be applied:

1. To the payment of the First Mortgage bonds, whether due or not, secured by said First Mortgage on November 1st, 1865.

2. To the payment of the amount owing to the United States, whether due or not, secured by its Subsidy Lien, until said Subsidy Debt is paid in full, and the surplus, if any, shall be distributed by subsequent orders of the Court: provided, however, that in the event that a sale shall be made under any decree rendered in the case of the United States of America against the Union Pacific Railway Company and others, pending in this Court, to enforce the subsidy lien of the United States before any sale under this decree and if such sale under the decree in the case of United States against the Union Pacific Railway Company and others shall be confirmed, then any surplus of the purchase money for the property and premises sold under the decree in this cause, after the payment in full of the first mortgage debt, shall be paid to the Master for account of the purchaser or purchasers at such sale under said subsidy Lien in the said suit of the United States against The Union Pacific Railway Company and others, and shall be paid over to such purchaser or purchasers, or his or their assigns, on proper application and order of the Court therefor.

The successful bidder shall pay to the Master in first mortgage bonds and cash, or one of them, an amount sufficient to pay all the First Mortgage bonds and interest to the date of this decree, and if the balance of his bid is applicable under the preceding provision hereof to the payment to the United States of the Subsidy Debt the purchaser may pay such balance to the Master or to the United States and the receipt of the Secretary of the Treasury, or his proper subordinate for any part of such balance shall be sufficient evidence of its payment.

The Master may in his discretion accept temporarily, instead of the manual delivery of the bonds, the certificate of any trust company which he may select, or certificate of of the Secretary of the Treasury, that it or he holds First Mortgage bonds secured by the mortgage of November 1st,

65, subject to the order of the Master, and will deliver em to him on demand for cancellation or other disposition.

24. OBLIGATIONS ASSUMED BY THE PURCHASER, The urchaser or purchasers, or his or their successors or asgns, shall, as part consideration and purchase price of the roperty purchased, and in addition to the sums heretofore equired to be paid, and paid, take the same and receive the eed therefor upon the express condition that he or they, or is or their successors or assigns, shall pay, satisfy and discharge:

FIRST. All the proper costs of this cause and of the xpenses of the sale hereunder, including the compensation nd necessary expenses of the Special Master appointed to make the sale.

SECOND. Any unpaid compensation which has been or shall be allowed to the receivers in this cause, or their solicitors, and any unpaid indebtedness and liability of the Receivers incurred in the management and operation of the mortgaged premises, since October 13, 1893, which is either established or unquestioned at the time of the delivery of the Master's deed.

THIRD. The charges, compensation, allowances and disbursements of the Complainants and any of the other parties to this cause, entitled thereto, their solicitors and counsel.

FOURTH. A sum equivalent to interest at the rate six per cent. per annum from the date of this decree to a date of payment to be fixed by the Special Master upon the entire amount of First Mortgage bonds which shall not have been presented by the purchaser on account of his bid.

FIFTH. The payment of all First Mortgage coupons and accrued interest on matured First Mortgage bonds now unpaid, to the amount of $102,930 as found in article Eighth hereof, which shall not have been paid at the time of the delivery of the property to the purchaser.

SIXTH. All unpaid indebtedness and obligations, if any such there be, which have been legally contracted or incurred by the Receivers in this cause in the operation or on account of the property embraced in said First Mortgage of the Union Pacific Railroad Company at any time before the same shall be delivered to the purchaser or purchasers; and also any such unpaid compensation which has been or shall be allowed by the Court to the Receivers or their solici-

tors in the cause in which Oliver Ames, Second, Samuel Carr and others are complainants, and the Union Pacific Railway Company and others are defendants, pending in this Court, and known as the "Ames cause" and all such unpaid indebtedness, obligations and liabilities of the said Receivers in said Ames cause which shall have been allowed or legally contracted or incurred by the said Receivers in the operation of said property embraced in said First Mortgage and shall be properly chargeable to said property, to the extent to which the revenues and assets in the hands of said Receivers in said Ames cause shall be insufficient to pay and discharge such compensation, indebtedness, obligations and liabilities in said cause.

SEVENTH. Any indebtedness or liability contracted or incurred by the defendant The Union Pacific Railway Company, or by the said Receivers in the said Ames Cause, in the operation of the property covered by and embraced in the said First Mortgage of November 1st, 1865, prior to the appointment of the Receivers in the cause herein in which Dexter and Ames are complainants, which are prior in lien to said First Mortgage, and payment whereof was provided for by order of this Court, dated January 21st, 1895, in this cause, and which shall not at the time of such delivery of possession, have been paid or satisfied out of the income of the property in the hands of the Receivers, upon the Court adjudging the same to be prior in lien to said First Mortgage, and directing payment thereof; provided that suit be brought for the enforcement of such indebtedness or liability incurred by said Railway Company or Receivers within the period allowed by the statute of limitations applicable thereto, after such indebtedness or liability was contracted or arose.

The costs, compensation, allowances and disbursements specified in the first three subdivisions of this article will be paid by the purchasers when they are fixed by the Court. The purchaser, his successors or assigns, shall pay any of the claims described in this order when by the Court required, or shall pay to the Master or into Court the moneys required to discharge the same from time to time as the Court may direct. And this Court reserves the right and retains the power and jurisdiction to take back and resell the mortgaged property in case the purchaser, his successors or assigns, fail to pay any of said

aims when by it required, and in case it or they fail to
y any other part of the purchase price of this property.

In the event that the said purchaser or purchasers,
r his or their assigns, shall refuse, after demand, to pay
ny indebtedness or liability specified in the Fourth, Fifth,
ixth and Seventh subdivisions of this article, the person
olding the claim therefor, whether established in a State
Court or any other Court of competent jurisdiction, may,
pon fifteen days' notice to said purchaser or purchasers,
heir successors or assigns, file his petition in this Court to
ave the said claim enforced against the property aforesaid
in accordance with the usual practice in claims of a similar
character; and such purchaser or purchasers, his or their
successors or assigns, shall have the right to appear and
make defense to any claim debt or demand so sought to
be enforced, and either party shall have the right to appeal
from any judgment, decree or order made thereon or with
respect thereto. Jurisdiction of this cause is retained by
this Court for the purpose of the foregoing provisions of
this Decree, and the Court reserves the right to retake and
resell said property in case the purchaser or purchasers,
his or their successors or assigns, shall fail to comply with any
order of this Court in respect to the payment of such prior
indebtedness or liability within thirty days after service
of a copy of judgment, decree or order requiring such pay-
ment, subject, however, to all rights of appeal and stay of
proceedings provided by law or which are hereinafter set
forth.

Such purchaser or purchasers, and his or their successors
or assigns, shall have the right to enter his or their appear-
ance in this Court or in any other Court, and he or they
or any of the parties to this cause shall have the right to
contest any claim, demand or allowance existing at the time
of the sale, then undetermined, or any claim or demand
which may arise or be presented thereafter which would
be payable by such purchaser or purchasers, his or their
successors or assigns, or which would be chargeable against
the property purchased in addition to the amount paid by
said purchasers at such sale, and may appeal from any
decision relating to any such claim, demand or allowance,
and shall have and enjoy all rights to stay or supersedeas
as fully as if a party thereto.

25. MASTER'S DEED; ITS EFFECT. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that, upon payment of the purchase price by the purchaser or purchasers of said property, or upon the making of such provision for the payment thereof as the Court shall approve, the said Special Master making the sale shall execute and deliver a good and sufficient deed conveying all the said railroad, telegraph, rolling stock and property of every kind and description, including any property and income acquired or received by the Receivers as Receivers in this cause through the operation of the mortgaged premises and any property acquired by the Receivers in the Ames cause for or appropriated by them to the use of the railroad and telegraph covered by the said First Mortgage or necessary to the said railroad and telegraph line for running and operating the same, together with all the franchises, rights, functions, immunities and appurtenances belonging to the mortgaged premises, subject, always, to all the indebtedness and liabilities of the Receivers and the property specified in Article 24th of this decree, to such purchaser or purchasers, or his or their successors or assigns, and that upon the execution and delivery of such deed the grantee thereunder shall be let into possession of the premises conveyed, and that the said Receivers and any party to this cause who is in possession of any of the same shall deliver such property over to the purchaser or purchasers, his or their successors or assigns, together with any property acquired by the Receivers in this cause appertaining to the line of railroad in said mortgage mentioned, that has not been applied, or shall not be otherwise applied, in pursuance of the orders of this Court. Such possession shall nevertheless be subject to the condition that this Court may retake and resell the property conveyed, in case the purchaser or purchasers, his or their successors or assigns, shall fail to pay any balance of the purchase price remaining unpaid, or to comply with any other provision contained in this Decree.

The purchaser or purchasers, his or their successors or assigns, shall have, enjoy and receive all revenues and compensation for services rendered to the Government or to any other parties or persons by the Receivers in the operation of the mortgaged premises subsequent to the date of sale.

The purchaser or purchasers and his or their successors or assigns shall, after such delivery of the premises and property, hold, enjoy and possess the same and all the rights, privileges, immunities and franchises thereto appertaining, with the right to own, hold, enjoy, maintain and operate the said railroad and property as fully and completely as the Union Pacific Railroad Company held, owned or enjoyed the same at the time of the execution of the said First Mortgage, or at any time thereafter, and as fully as the defendant The Union Pacific Railway Company has heretofore held, owned or enjoyed or now holds, owns or enjoys the same, and the purchaser or purchasers, and his or their successors and assigns, shall thereupon be entitled to have and to hold the said premises so conveyed, by a full, absolute and indefeasible title, freed and discharged from all the mortgages, liens, claims and charges of each and every defendant herein and of all parties to this cause, saving and excepting the right and title as hereinbefore defined of the American Loan and Trust Company, as trustee of the Equipment Trust Indenture of October 1st, 1887, and the mortgage lien, claims and charges of the trustees of the Omaha Bridge Mortgages of April 1st, 1871, and September 27th, 1871, and of the trustee of the Omaha Bridge Renewal Mortgage of October 1st, 1885 and the holders of the outstanding and unpaid bonds issued under and secured by said Bridge Mortgages respectively, and saving and excepting also the right of the Government to have the preference at all times in the use at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the telegraph line and railroad for the transmission of despatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores, upon said railroad for the Government whenever required by any department thereof; and saving and excepting the rights and liens of the parties secured by article 24 hereof, and said purchaser or purchasers, and his or their successors and assigns, after such delivery of the premises and property, shall have, receive, hold and enjoy all the earnings, income and proceeds of the operation, use or disposition thereof and all compensation for the transmission of despatches over said telegraph line, and the transportation of any persons or property over said rail-

road, for any persons, party or corporation, including the Government of the United States, freed and discharged from all liens, claims and charges of each and every defendant herein, and of all parties to this cause and those claiming under them except as hereinbefore expressly provided.

26. DEED BY RAILWAY COMPANY AND TRUSTEES. The defendant The Union Pacific Railway Company shall at the time of the execution of the said deed by said Special Master, as a further assurance to the purchaser or purchasers, execute its deed, or join with said Special Master in the execution of the deed to be made by him, and shall thereby convey and release to the purchaser or purchasers and his or their successors or assigns all its right, title and interest in and to the property conveyed by said Special Master to the said purchaser or purchasers. And said Railway Company shall also execute and deliver to said purchaser or purchasers, or to his or their assigns, and shall unite in the execution and delivery of such further, separate and specific deeds and conveyances of lands, lots or other property, of which the title shall be held by or for it, described in the Master's report, hereby confirmed, as embraced in said First Mortgage as shall be by said Special Master approved as necessary or proper to complete or assure the title of the purchaser or to complete or facilitate the record evidence thereof.

The said complainants F. Gordon Dexter and Oliver Ames, as Trustees under said First Mortgage of November 1st, 1865, hereby foreclosed, shall likewise at the time of the execution of said deed by the Special Master, transfer and release to such purchaser or purchasers and his or their successors or assigns, all their right, title and interest under the said first mortgage in and to the property so conveyed; and the Receivers heretofore appointed in said Ames cause and in this cause shall make and deliver a sufficient deed, conveying and assigning to the purchaser or purchasers and his or their successors or assigns all their right, title and interest in, of or to any property vested or standing in their names or to which they have acquired title as such Receivers in the management and operation of the premises covered by and embraced in said First Mortgage so far as the same may be appurtenant to said premises.

27. SPECIAL MASTER APPOINTED. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Hon. William D. Cornish of St. Paul, Minn., be, and he is hereby, appointed Special Master to execute this Decree and make the sale herein provided to be made, and to execute and deliver the deeds of conveyance of the property sold to the purchaser or purchasers thereof upon confirmation of said sale and payment of the purchase price thereof, as herein provided, and this Court reserves the right at any time to appoint another Master with the same powers as the one herein appointed, in case of the inablity for any reason of the Special Master herein appointed to act or perform the duties of his office or in reference to his office. As soon as any sale have been made by such Special Master in pursuance of this Decree, he shall report the same to this Court for confirmation, and shall from time to time thereafter make such further and supplemental reports as shall be necessary to keep the Court and the parties to this cause properly advised of his proceedings in the execution of this Decree.

28. DUTIES OF SPECIAL MASTER AFTER CONFIRMATION OF SALE. Within ten days after the confirmation of the sale the Special Master, shall, by notice to the purchaser, fix a date not less than sixty nor more than ninety days then distant, for the payment of the sums due, at the date so fixed, on bonds not prior to such date used on account of the purchaser's bid, or otherwise paid, and the purchaser shall, prior to the expiration of such period so fixed furnish the Master with a sum of money equivalent to the interest on such unpresented bonds from the date of this decree to the date of such payment so fixed by the Master. The Master shall also give public notice of the time when and the place where he will be prepared to make such payment by publication at least once a week for two successive weeks in a newspaper published in each of the following cities—namely, New York and Omaha—and no holder of any claim to bonds or coupons of the payment of which notice shall have been so given, who shall fail to present the same for payment at the time and place specified shall be entitled to the payment of any interest thereon after that date out of the proceeds of the said sale or the additional sum furnished by the Master by the purchaser as aforesaid.

The Master shall pay, stamp paid and cancel the First

Mortgage bonds presented to him for payment after such notice on or before the date of payment named therein and shall thereupon deposit in the registry of this Court the portion of the purchase price of said mortgaged premises which is applicable to the payment of those bonds which have not been presented to him, either in payment of the bid or for payment in cash, together with one per cent. of such amount for clerk's fees which shall be paid to him by the purchaser, his successors or assigns, as a part of the costs herein.

The Master shall report what bonds have not been presented to him for cancellation and the amount of the said deposit applicable to the payment thereof, and the Clerk of the Court shall, thereafter, on the customary order of the Court, pay, stamp paid and cancel any of such unpresented bonds which are presented to him for payment.

29. QUESTIONS RESERVED IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that all questions not hereby disposed of, including the discharge of the Receivers and the statement and settlement of their accounts, are hereby reserved by this Court for its future adjudication, and that any party to this cause may at any time apply to this Court for further relief at the foot of this Decree in respect to matters not herein specifically provided for.

WALTER H. SANBORN,
U. S. Circuit Judge, Eighth Circuit.

JUDGE MCHUGH: Complainant now offers in evidence the original answer of the Chicago, Rock Island and Pacific Railway Company to the Petition of the Receivers in re The Union Depot.

It is admitted that the paper offered in evidence, as above specified, is the original paper.

MR. BALDWIN: Defendant objects to this for the reason that the same is incompetent, irrelevant and immaterial.

**In re Receivers' petition for leave to contract with the Omaha Union Railway & Terminal Company.**

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IN THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF NEBRASKA.

*(Title of cause omitted.)*

ANSWER OF CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Now comes the Chicago, Rock Island & Pacific Railway Company, hereinafter called the Rock Island Company, and responding to the order entered herein on the 6th day of August, 1895, at the instance of the Receivers appointed in said suit, to show cause, if any it has, why the prayer of the petition of said Receivers for authority to enter into certain contract with the Omaha Bridge & Terminal Railway Company should not be granted, says:

1. That it has no knowledge or information save as advised by said petition as to the facts and considerations set forth therein, upon which the recommendation of said Receivers is based, and therefore leaves them to make full proof thereof.

2. After the Union Pacific Railroad had been completed from Council Bluffs, in Iowa, to Ogden, in Utah, and particularly in the latter part of 1871, it became a matter of vital importance to said company to acquire fit and adequate grounds in the City of Omaha for the site of its passenger depot, and for facilities for the transfer of passengers between it and other railroads terminating in said city; and it also was of great interest to the inhabitants of said city that such depot and facilities for doing the business of said company should be so located as to serve their convenience. Accordingly the officers of said railroad company, and a number of the citizens of said city who were largely interested in it, selected for the site of said depot the lands hereinafter mentioned, being at the western terminus of the said railroad company's bridge across the Missouri River. And in order to induce the railroad company to locate its said depot and other

business facilities thereon, the County of Douglas donated to said company its bonds for two hundred and fifty thousand ($250,000) dollars, which said county has since paid in full, and the City of Omaha made to said company its bonds amounting to $200,000, a part of which was applied to the purchase of the said twenty acres of land, save such other parts of the tract as had been donated by divers parties for the same purpose; the balance of said city bonds being donated to said company. The title to the said lands having been thus acquired, a contract was entered into bearing date the first of January, 1872, between The Union Pacific Railroad Company, the City of Omaha, and and the County of Douglas, a copy of which is set forth in the body of a deed hereinafter mentioned. Thereupon the title to the said lands was conveyed to Alvin Saunders, as trustee, who, on the 20th of January of the same year, made to the said railroad company a deed of that day, a copy of which is hereto annexed, marked "A," and made a part hereof, under which conveyance and subject to the conditions therein expressed, said railroad company has occupied said lands.

3. A part of the lands mentioned in the proposed contract between the said Pacific Company and the said Terminal Company, secondly in the said petition mentioned, now on file with and in the hands of the Special Master, are a part of those so as aforesaid conveyed by said Saunders to said Pacific Company, and they are impressed with a trust declared and set out in the agreement between said company, the City of Omaha and the County of Douglas, hereinbefore mentioned, and the deed made by the said Saunders to said company. Nor is it competent for the Pacific Company or its Receivers, to alienate the said lands, and particularly as proposed in their contract with the said Terminal Company.

4. The Rock Island Company owns and for ten years and more last past has owned and operated a railroad from Chicago, in Illinois, to Council Bluffs, in Iowa, and its said railroad s one of the lines of road which is mentioned in the third of the covenants of the Pacific Company mentioned in the contract of the 1st of January, 1892, and also in the sixth of the said covenants and agreements. And the said Rock Island Company is entitled to the ben-

efit of the said contract. Nor is it competent for the said Pacific Company or its Receivers to alienate, or for this Court to authorize them to alienate the said lands or any part thereof to any third party and particularly to said Terminal Company, as is proposed in the said petition and the two several contracts accompanying the same. While it is not proposed by the said Pacific Company and its Receivers, so far as appears from the said petition, to convey all of the aforementioned tract of twenty acres to the said Terminal Company, yet forasmuch as all parts of the said tract are to be considered and taken together as one, and that the alienation of a part defeats the purposes of the agreement of January 1st, 1872, the rights, interests and title of the said Rock Island Company under said contract, will be disastrously affected by the segregation of a part of said tract and its alienation to said Terminal Company.

5. The said Rock Island Company puts forward its claim aforesaid, not only upon the advice of its counsel learned in the law, but of the opinion and judgment of the District Court of the State of Nebraska for Douglas County, pronounced in a certain action brought therein by Ernest Stuht, plaintiff, against the City of Omaha, Richard C. Cushing, its mayor, Charles S. Goodrich, its comptroller, the Omaha Union Depot Company, Alvin Saunders, Thomas L. Kimball, president of said Depot Company, and Thomas H. Benton, auditor of public accounts, wherein among other things, it was adjudged and decreed, that the said City of Omaha, its mayor and city council and city clerk and their successors in office and also all its officers, agents, and attorneys and said Alvin Saunders, be and they were thereby perpetually restrained and enjoined from making, executing, issuing, or delivering to said Omaha Union Depot Company, or any other party, any deed of conveyance or other instrument which shall in any manner release, relinquish, affect or impair any right, title or interest, advantage, or benefit of the City of Omaha or of its citizens or inhabitants, in or to any of said real estate, described in said petition and amended petition, including that certain real estate described in the deed of conveyance executed by Alvin Saunders, trustee, to The Union Pacific Railroad Company, dated January 20th, 1872, and recorded in Book 12 of

Deeds, at page 220 and following, Douglas County, Nebraska, records. And that said Omaha Union Depot Company, its officers and agents be and they are hereby perpetually restrained and enjoined from receiving any such deed, instrument, or title, which decree remains unappealed from, and unreversed, unmodified, or vacated. And the said Rock Island Company hereby prays leave to refer to the opinion of said District Court in said action, and to its judgment as hereinbefore recited should it be necessary to do so.

6. In the summer of 1889, it seemed to the said Pacific Company and to the Chicago, Burlington & Quincy Railroad Company which owned and operated a railroad from Chicago by way of Omaha to Denver, in Colorado, of importance to them that a depot of modern construction and conveniences should be erected on the tract of land hereinbefore mentioned, and that for the purposes of their business and of such other companies as should desire to avail themselves of the facilities which should be furnished thereby, other lands adjoining should be purchased and acquired. In order to realize their desires, they caused a corporation to be organized under the laws of the State of Nebraska, to be known as "The Omaha Union Depot Company," by W. H. Holcomb, Thomas L. Kimball, and E. Dickinson, who were the principal administrative officers of the said Pacific Company, and G. W. Holdrege and J. G. Taylor, who were the principal administrative officers of the Burlington Company, as the incorporators of the said depot company.

Thereupon, the said companies caused the stock of said Depot Company to be subscribed, seven hundred and fifty shares by the administrative officers of said Pacific Company, and a like number of shares by the administrative officers of said Burlington Company, all of whom took and held the stock of said Depot Company in trust for the railway companies represented by them respectively. The said two railroad companies proceeded with the enterprise, and acquired a large amount of lands adjoining the said twenty acre tract, held by the said Pacific Company by the aforesaid deed to it from said Saunders, and on the said lands they laid out terminal yards with tracks, etc., and commenced the erection of a passenger depot, the said two railway companies being the real own-

rs in common of the property, although the title thereto
ss in said Depot Company.

7. Shortly afterwards, the said Rock Island Company determined to extend its road from Chicago to Council Bluffs, across the Missouri River at Omaha to a connection with another line of road which it owned and operated through the southern tier of counties of the State of Nebraska, to Denver; and having made arrangements for building a bridge across the Missouri River, in furtherance of said enterprise, the said Pacific Company applied to it to accept the facilities which were afforded by its road and bridge from Council Bluffs to South Omaha, so as to relieve the said company from the expense of a new line and bridge between those points. And thereupon, the said Pacific and Rock Island Companies together with certain subsidiary companies, entered into a contract, a copy of which is hereto annexed marked "B." Thereupon, the said Rock Island Company built its line from South Omaha to Lincoln, as it was by said contract required to do, and began to operate its trains from Council Bluffs to South Omaha over the road and bridge of said Pacific Company, as provided for in said contract, and from South Omaha to and over its line to Denver. On or about the 5th of January, 1891, the said Pacific Company by force prevented said Rock Island Company from running its cars and trains from Council Bluffs to South Omaha, over the said Pacific Company's road and bridge, and thereupon said Rock Island Company commenced its certain action in the District Court for Douglas County, for an injunction against the said Pacific Company, restraining it from preventing the said Rock Island Company from running its cars and trains over the said reach of road; the said Pacific Company thereupon removed said action into this Court, where it insisted that its said contract with the said Rock Island Company was illegal and void, and that it was not obliged by the covenants and agreements therein contained, and such proceedings were had thereon, that on the ——— day of ——— a decree ——— was rendered by this Honorable Court in the said suit, wherein the validity of the said contract was affirmed, and a decree rendered carrying the same into execution. From which decree the said plaintiff company appealed to the United States Court of Appeals for the Eighth Circuit, which Court affirmed

the said decree, and the same remains in full force not reversed, modified, or vacated. And under and by virtue of the said contract and decree from the day of its date rendered by this Court, the said Rock Island Company has operated its trains and cars from Chicago over the Pacific Company's road and bridge from Council Bluffs to South Omaha, and thence to Denver; and thereby conducts an immense traffic.

8. The depot referred to in the fourth paragraph of section one, of article one, of the contract between the Pacific and other companies on the one side, and the Rock Island and another company on the other side, hereinbefore mentioned, is the same depot as that referred to in the sixth and seventh paragraphs hereof, and the use and enjoyment of said depot was one of the considerations which principally moved the said Rock Island Company to enter into said contract. The said Burlington Company has always been and is now ready to assure to said Rock Island Company, so far as it could do so as half owner thereof, the use and enjoyment of said union depot, and to do so, and, as far as it could, cause the said Depot Company to also do so, by any proper instrument in writing in that behalf; and said Pacific Company has also claimed that it was ready to and would carry out its agreement contained in the paragraph above mentioned of said contract. If the said Pacific Company and its Receivers are permitted to enter into the two contracts referred to in said petition it will of necessity abandon the construction of the depot referred to in its contract with said Rock Island Company and said Rock Island Company will not have the privileges of any depot in Omaha, unless it build one for itself or runs into that contemplated by said Terminal Company. That the expense of operating its trains by said Rock Island Company to, into and out of said Terminal Company's proposed depot will exceed the expense to which it will be liable in operating its trains to, into and out of the depot for which it contracted as aforesaid by the sum of $10,000 per annum and over.

9. And this respondent further shows that in and by one of the certain contracts which the said petition of said Receivers herein seeks to authorize the said Union Pacific Railway Company to enter into and execute it is proposed on the part of the said Union Pacific Railway

pany to construct certain tracks, connections, switches, crossings in connection with and across the said tracks he said Union Pacific Railway Company, of which by said articles of agreement and the said decree of this norable Court hereinbefore referred to, this respondent ntitled to the full, equal and joint possession and use, when constructed to grant unto said Omaha Bridge Terminal Railway Company and its lessees the right l privilege of crossing and running locomotives, passenger, l other cars, which might be a part of passenger trains, ng and upon said tracks and connections, as well as right to use all switches and cross-overs appertaining the same, for the purpose of running passenger trains and from the proposed union passenger depot in said ntract mentioned, together with all franchises, rights d privileges thereto belonging or in any wise appertain-, which said Union Pacific Railway Company may now ssess or may hereafter acquire, only to the extent, how-er, that may be necessary and sufficient to enable the id Omaha Bridge & Terminal Railway Company and lessees to use and enjoy the easement thereby granted. he said tracks, connections, switches and crossings are and by the said proposed contract and on the map ereto attached, designated by the letters "J," "K," and L." This respondent respectfully shows that the con-ructions of said tracks, connections, switches and cross-gs, and the use thereof by the said Omaha Bridge & erminal Railway Company and its lessees of indefinite umber in manner and form as in said proposed contract pecified, will materially interfere with, obstruct, and pre-ent the enjoyment by this respondent of that full, equal nd joint possession and use of the main and passing tracks nd other tracks and appurtenances of said Union Pacific Railway Company which by the said articles of agreement nd the said decree of this Honorable Court are secured o this respondent, and that the making and entering into f said proposed contract by The Union Pacific Railway Company would be an impairment of this respondent's ights, which is forbidden by said contract and decree and which ought not to be authorized in equity.

*Wherefore* the said Rock Island Company submits that the said Pacific Company and its Receivers ought not to abandon the depot and incident works contemplated

by the parties to the contract of May 1st, 1890, nor ought this Court to give its sanction to such inequitable action.

While the Rock Island Company submits to the order of this Court calling upon it to show cause why the prayer of said petition should not be granted, it insists that it is not within the jurisdiction of this Court in this summary proceeding to call in question the claims of said company or determine the same, nor to authorize its Receivers to do what puts in jeopardy the rights of said Rock Island Company.

J. M. WOOLWORTH,
Solicitor for Chicago, Rock Island
& Pacific Railway Company.

JUDGE MCHUGH: Complainant now offers in evidence a Railway Map of the United States, identified as Exhibit 17, said map being referred to in the testimony of A. B. Stickney, showing the different lines of Railway.

It is admitted that the map, as specified in the above offer is correct.

MR. BALDWIN: Defendant objects to this map for the reason that it is incompetent, irrelevant and immaterial.

JUDGE MCHUGH: Complainant now offers in evidence the following portion of the testimony given by Thomas L. Kimball in the case of the Chicago Rock Island and Pacific Railway Company against the Union Pacific Railway Company, et al;

It being admitted that the said testimony may be read in evidence in this case, in all respects as though Mr. Kimball were personally present and sworn, and testified in this case.

The testimony of Mr. Kimball, as offered, is objected to as incompetent, irrelevant and immaterial.

Said testimony being read in evidence is as follows:

Q. Have you any figures to show the increase in business across that bridge from 1872 down to the present time?

A. I asked the audit department to give me a statement, roughly, of the bridge earnings from the time it was opened down to the present time. They have had less than a full day to go into the matter, but they find that it will require considerable time and research to get the figures prior to 1874, and are not sure that they can find the data necessary to give a correct statement. But in 1874 the bridge earnings are shown, $396,458.29; 1875, I could not get. But I get 1876 as $482,862.88; 1877, $475,-773.16; 1878, $495,229.38. From 1874 to 1878 shows an increase of 25 per cent in the earnings. There is a gap in the figures until you come to 1886, and here I have got only the freight; the other figures 1874 to 1878 were the total earnings. They could give me only the freight earnings from 1886 to 1889. Freight earnings on the bridge for the year ending June 30, 1886, $385,633.19; 1887, $416,405.78; 1888, $537,722.26; 1889, 522,041.86. Or from 1886 to 1889, an increase of thirty-five per cent.

Subject to the objections that it is incompetent, irrelevant and immaterial, it is admitted that during the receivership of the Union Pacific Railway Company, the gross earnings from the Bridge Division were $1,425,434.68, said earnings being from August 1, 1894, to January, 1898; that during the period from 1890 to 1893 inclusive, the earnings of the Bridge Division were approximately the same as previous to that time, the parties hereto being unable to find the exact amounts.

## The Following Testimony is Offered on Behalf of Defendants.

It is agreed by and between the parties hereto that in 1865, at the time of the construction of the original line of the Union Pacific Railroad from a point on the west bank of the Missouri River to a point thereafter known as, and called, the Bridge Junction, that the western boundary of the limits of the City of Omaha, where it crossed the track of the Union Pacific Railroad Company, was at or near the point now shown on the maps as Sixteenth Street, in the City of Omaha.

This is agreed upon subject to the objection by the complainants as irrelevant and immaterial.

MR. BALDWIN: Defendants now offer in evidence, 1st, the Bill of Complaint in the case of the United States of America, plaintiff, against the Union Pacific Railway Company, et al., in the Circuit Court of the United States for the District of Nebraska; also the following named records in said case.

2. Answer of the Union Pacific Railway Company in said case.
3. Order of Reference.
4. Report of Special Master.
5. Exceptions to Master's Report.
6. Decree of foreclosure.
7. Master's first report of sale.
8. Petition for Confirmation.
9. Order Confirming First Report.
10. Master's Second Report.
11. Consent to Order Confirming Sale.
12. Order Confirming Master's Second Report.
13. Master's Third Report of Sale.
14. Assignment of Bids.
15. Deed of Master.

MR. KELLOGG: To each and every of which documents the complainants object as incompetent, irrelevant and immaterial, it being admitted that they are the original documents.

Said documents, as offered, being read in evidence, in the respective order of their introduction, are as follows, to-wit:

To the Honorable the Circuit Court of the United States, for the Eighth Circuit and District of Nebraska, in Equity Sitting.

The United States of America, by Judson Harmon, Attorney General, acting in the premises by direction of the president of the United States, under authority of the tenth section of the Act of Congress approved May 7th, 1878, and entitled,

"An act to alter and amend the Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes,' approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first named act,"

and under the authority of the fourth section of the act of Congress, approved March 3, 1887, entitled,

"An act authorizing an investigation of the books, accounts and methods of railroads, which have received aid from the United States, and for other purposes,"

now bring this their Bill of Complaint against the Union Pacific Railway Company, a corporation organized and existing under the laws of the United States of America, S. H. H. Clark Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers now in possession of and operating said railway as hereinafter described, F. Gordon Dexter and Oliver Ames as trustees, Union Trust Company of New York as trustee, J. Pierpont Morgan and Edwin F. Atkins, as trustees, Central Trust Company, of New York, as trustee, and thereupon the United States of America, by the Attorney General aforesaid, show unto your Honors as follows:

That the Union Pacific Railroad Company was a corporation created by and existing under certain laws of the United States, to-wit: An act of Congress, entitled

"An Act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military and other purposes,"

approved July first, 1862, also an act of Congress amendatory thereof, approved July second, 1864, and other acts of Congress amendatory thereof and supplementary thereto.

That the said Union Pacific Railway Company as now existing, was formed on or about the twenty-fourth day of January, 1880, under and by virtue of the powers and provisions contained in said several acts of the Congress of the United States, by a consolidation of the said Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, each of which said three companies were named and described in the acts of Congress aforesaid, and that the said Union Pacific Railway Company so created by said consolidation thereupon became successor to each and all of said constituent companies, and thereby became vested with all the rights, titles, interests, properties and franchises of each and all of said constituent companies.

That the said Union Pacific Railway Company is insolvent and its property is posssessed by and in the hands of Receivers as hereinafter stated, and that its general office and principal place of business is situated in the city of Omaha, in the State and district of Nebraska.

That by the *second* section of said act of Congress, approved July 1, 1862, entitled—

"An Act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes,"

it was, after the provision for the organization of the said Union Pacific Railroad Company, enacted, that the said corporation created by said act, should be authorized and empowered to lay out, construct, furnish, maintain and enjoy a continuous railroad and telegraph with the appurtenances from a point in the one hundredth Meridian of longitude, west from Greenwich, between the south margin of the valley of the Republican river, and the north margin of the valley of the Platte river, in the territory of Nebraska to the west boundary of Nevada territory, upon the route and terms thereinafter in said act provided, and should be for said purpose vested with all the powers, privileges and immunities necessary to carry the same into effect; and further that the right of way

through the public lands should be and the same was thereby granted to said company for the construction of said railroad and telegraph lines, and the right power and authority was thereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber and other materials for the construction thereof. And said right of way was thereby granted to said railroad, to the extent of two hundred feet in width, on each side of said railroad where it might pass over the public lands, including all necessary grounds for stations, buildings, workshops and depots, machine shops, switches and sidetracks, turntables and water stations.

That there should be and was thereby granted to said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of mail, troops and munitions of war and public stores thereon every alternate section of public land designated by odd numbers to the amount of five alternate sections per mile on each side of said railroad on the line thereof, and within the limits of ten miles on each side of said road not sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim might not have attached at the time the line of said road should be definitely fixed, provided that all mineral land should be excepted from the operation of said act, and that all such lands which should not be sold or disposed of by said company within three years after the completion of said railroad should be subject to settlement and pre-emption like other lands, at a price not exceeding one dollar and twenty-five cents per acre to be paid to said company; that whenever said company should have completed forty consecutive miles of any portion of said railroad or telegraph line, the President of the United States should appoint three commissioners to examine the same, and if it should appear to him that forty consecutive miles of any portion of said railroad or telegraph line had been completed and equipped, in all respects as required by said act, thereupon upon certificate of said commissioners to that effect, patents for said lands should issue to said company on each side of said railroad, so far as the same was thus completed and so on, in like manner, as each forty miles of said railroad and telegraph lines should be completed.

That by the *fifth* section of said act it was provided that upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph in accordance with the provisions of said act, the Secretary of the Treasury should issue to the said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per cent. per annum interest (said interest payable semi-annually), said interest to be paid in United States Treasury notes or any other money or currency, which the United States might declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for said section of forty miles, and to secure the repayment to the United States as thereinafter provided, of the amount of said bonds so issued and delivered to the said company, together with all interest thereon, which should have been paid by the United States, the issue and delivery of said bonds to the company should, *ipso facto*, constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds might be issued, and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of said act, the said road, with all the rights, functions, immunities and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which at the time of said default might remain in the ownership of said company, might be taken possession of by the Secretary of the Treasury for the use and benefit of the United States.

And by the *sixth* section of the said Act it was further provided that the grants aforesaid were made upon the condition that said company should pay said bonds at maturity, and keep said railroad and telegraph line in repair and use, and should at all times transmit messages over the telegraph line and transport mail, troops and munitions of war, and supplies and public stores upon said railroad, for the Government, whenever required so to do, by any department thereof, and that the Government should, at all times, have the preference in the use of the

same for all the purposes aforesaid (at fair and reasonable rates of compensation not to exceed the amounts paid by private parties for the same kind of service), and that all compensation for services rendered the Government should be applied to the payment of said bonds and interest until the whole amount should be fully paid; that said company might also pay the United States wholly or in part in the same or other bonds, treasury notes or other evidences of debt against the United States, to be allowed at par, and that after said railroad should be completed, and until the said bonds and interest should be paid, at least five per centum of the net earnings of the said Railroad should be annually applied to the payment thereof.

And that by the *eleventh* section of said act it was further provided that for three hundred miles of said railroad, mostly mountainous and difficult of construction, to-wit: One hundred and fifty miles westwardly from the eastern base of the Rocky Mountains, and one hundred and fifty miles eastwardly from the western base of the Sierra Nevada Mountains, said points to be fixed by the President of the United States, the bonds to be issued to aid in the construction thereof should be treble the number per mile thereinbefore provided, and the same should be issued and the land therein granted be set apart upon the construction of every twenty miles thereof, upon the certificate of commissioners aforesaid, that twenty miles of the same had been completed, and between the sections last named of one hundred and fifty miles each that the bonds be issued to aid in the construction thereof should be double the number per mile first above, and that the same shall be issued and that the lands set apart upon the construction of every twenty miles thereof, upon the certificate of said Commissioners that twenty miles of the same had been completed, provided that no more than fifty thousand of said bonds should be issued under said act to aid in constructing the main line of said railroad and telegraph.

And by the *twelfth* section of said act provision was made for connection of the route of said railroad with other railroads extending westwardly and in case of difference of location that the same should be settled by the President of the United States, and that the track of the entire line of railroad and branches should be of uniform

gauge or width to be determined by the President of the United States.

And by the *fourteenth* section of said act it was provided that the said Union Pacific Railroad Company should be and it was thereby authorized and required to construct a single line of said railroad and telegraph from a point on the western boundary on the State of Iowa to be fixed by the President of the United States upon the most direct and practical route to be subject to his approval from the said point of commencement, so as to form a connection with the lines of said Company at some point on the one-hundredth meridian of longitude upon the terms and conditions contained in said act for the construction of the said railroad and telegraph before mentioned and that said company should complete one hundred miles of its railroad and telegraph within two years after filing its assent to the conditions of said act, and at the rate of one hundred miles thereafter until the whole should be completed.

And by section *eighteen* it was provided that the better to accomplish the object of said act, viz. to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress might at any time, having due regard for the rights of said companies named therein, amend, alter or repeal said act.

And complainants further aver that by the *third* section of said amendatory act of Congress, approved July 2, 1864, it was provided that the width of the strip of land authorized to be taken for the construction and working of said road, was reduced to a width not exceeding one hundred feet on each side of the centre line of said railroad, unless a greater width should be required for the purpose of excavation or embankment and also that said company might enter upon, purchase, take and hold any land or premises necessary and proper for turnouts, standing places for cars, depots, station houses and any other structures required in the construction and operation of said road.

And further, by the *fourth* section of said act, it was

ovided that the number of alternate sections of land anted for the purpose of aiding in the construction of d railroad should be increased from five to ten within e limits of twenty miles on each side of the said railroad, t sold, reserved or otherwise disposed of by the nited States and to which a pre-emption or home- ead claim might not have attached at the time said ilroad should be definitely fixed, and further that within o years after the passage of said act said company ould designate the general route of said road as near as ight be and file a copy in the Department of the Interior, hereupon that the Secretary of the Interior should cause e lands within twenty-five miles of said designated route r routes to be withdrawn from pre-emption, private entry nd sale, and that whenever any portion of said route hould be finally located, said Secretary should cause the aid lands to be certified and set off as fast as might be ecessary for the purposes in said act named.

And further by the *fifth* section of said amendatory ct it was provided that the time for designating the gen- eral route of said railroad and filing the map of the same, and for completing that part of the railroads required by the terms of said act, be and the same should be extended for one year from the time designated in said act approved July 1st, 1862; and further that only one-half of the com- pensation for services rendered for the Government by said company should be required to be applied to the payment of the bonds issued by the Government in aid of the con- struction of the said roads.

And by the *eighth* section of said amendatory act it was further provided that for the purpose of facilitating the work on said railroad and enabling the said company as early as practicable to commence its grading in the regions of the mountains, it was provided that whenever the Chief Engineer of said company and said Commis- sioners should certify under oath that a certain proportion of the work required to prepare the road for the super- structure on any section of twenty miles should be done the Secretary of the Treasury was thereby authorized and required, upon delivery of said certificate, to deliver said company a proportion of said bonds not exceeding two- thirds of the amount authorized to be issued under the provisions of the said act to aid in the construction of said

section of twenty miles, in no case exceeding two-thirds of the value of the work done, the remaining one-third to remain until the said section should be fully completed and certified.

And the complainants further aver that in and by the terms of the *ninth* section of the said amendatory act, authority was given to the Union Pacific Railroad Company to construct bridges over the Missouri River, and all other rivers, for the convenience of said road, provided that any bridge or bridges so constructed over the Missouri River or any other navigable river on the line of the said road, should be constructed with suitable and proper draws for the passage of steamboats, and should be built, kept and maintained at the expense of said company in such manner as not to impair the usefulness of said rivers for navigation to any greater extent than such structures of the most approved character necessarily do.

And the complainants further aver that in and by the terms of the *tenth* section of the said amendatory act, approved July 2, 1864, the *fifth* section of the act, approved July 1, 1862, was so modified and amended, that the Union Pacific Railroad Company might, upon completion of each section of said road, as provided in said act, and the said act to which the same was an amendment, issue its first mortgage bonds on its railroad and telegraph line to an amount not exceeding the said bonds of the United States, and of even tenor and date, time of maturity and rate and character of interest with the bonds authorized to be issued by the United States to said railroad companies respectively, and that the lien of the United States bonds should be subordinate to that of the bonds of said company thereby authorized to be issued on its railroad property and equipment, except as to the provisions of the *sixth* section of the act approved July 1, 1862, relating to the transmission of despatches and the transportation of mails, troops and munitions of war, supplies and public stores for the government of the United States and that said *fifth* section of said act approved July 1st, 1862, should be further amended by striking out the words "forty" and inserting in lieu thereof the words: "on each and every section of not less than twenty," so that upon the completion and equipment of twenty consecutive miles of said railroad and the certificate thereof, the Secretary of the

reasury thereby was required to issue to said company onds of the United States of the tenor, rate and amount esignated in the *fifth* section of said act approved July st, 1862, as hereinbefore set forth.

And the complainants further aver that by the *six-enth* section of said amendatory act further power was iven to said Union Pacific Railroad Company and other ompanies described in said acts to unite and consolidate heir organizations in manner and form as described in aid act, for further particulars whereof reference is here had and made to the *sixteenth* section of said act as adopted by Congress and approved by the President.

And in and by said section further provision was made for the connection of said Union Pacific Railroad Company with the Central Pacific Railroad Company, which, by said acts, had been created and authorized to build a railroad from a point in the state of California, eastwardly, to a junction with the said Union Pacific Railroad, at a point to be fixed in the manner described in said acts.

And the complainants further state that on the 17th day of November, 1863, and the 7th day of March, 1864, the President of the United States, by executive orders of those dates, respectively fixed the eastern terminus of the Union Pacific Railroad on the Iowa bank of the Missouri river,

"at a point on the western boundary of Iowa, east of and opposite to the east line of section ten in township fifteen, north of range thirteen east of the sixth principal Meridian in the territory of Nebraska."

That in and by an act of the Congress of the United States, approved March 3d, 1865, it was enacted that the *tenth* Section of said act of July 2d, 1864, be so modified and amended as to allow the said Union Pacific Railroad Company, among other companies, to issue its six per centum thirty year bonds, interest payable in lawful money of the United States, upon its separate road, and to issue its bonds to the extent of 100 miles in advance of a continuous completed line of construction.

And the complainants further aver that under and in pursuance of the provisions of said acts approved July 1st, 1862, and July 2d, 1864, and other acts amendatory thereto, the said Union Pacific Railroad Company, in accord-

ance with said acts, built and completed a railroad and telegraph line on the most direct and practicable route, and approved by the President of the United States, and equipped the same with rolling stock from its said eastern terminus through the States of Nebraska, Wyoming and Colorado, to the western terminus, at a connection or junction with the Central Pacific Railroad, at a point about five miles west of Ogden in the then territory but now State of Utah, a distance of one thousand and forty-two and $\frac{5}{10}$ dollars miles, more or less, including a bridge over the Missouri river between Council Bluffs, in the State of Iowa and Omaha aforesaid, and remained in possession thereof, and operated the same under said authority, until the appointment of Receivers as hereinafter recited.

And the United States of America further state that under and in pursuance of the Act of the Congress of the United States, approved May 7th, 1878, entitled

"An Act to alter and amend the Act entitled an Act to aid in the construction of the railroad and telegraph line from Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes, approved July 1st, 1862, and also to alter and amend the Act of Congress approved July 2, 1864, in amendment of the said first named Act,"

it was recited, among other things, that the United States upon demand of said Union Pacific Railroad Company had theretofore issued, by way of loan to it, and as provided in said acts, the bonds of the United States payable in thirty years from the date thereof, with interest at six per cent. per annum, payable half-yearly, the principal sums of which amounted to $27,236,512, on which the United States had paid over ten million dollars interest over and above all reimbursements, which said bonds had been sold in the market or otherwise disposed of, by said company, and said corporation had issued and disposed of an amount of its own bonds equal to the amount so issued to it by the United States as aforesaid, and secured the same by mortgage, which were, if lawfully issued and disposed of, a prior and paramount lien in the respect mentioned in said acts to that of the United States, as stated, and secured thereby, for which and other reasons recited in

preamble of said act, it was provided by said act that net earnings mentioned in the act of 1862 of said com- ny should be ascertained by deducting from the gross ount of its earnings the necessary expenses actually d in the year in operating the same and keeping the ne in a state of repair, and also the sum paid by it thin the year in discharge of interest on its first mort- ge bonds, whose lien has priority over the lien of the nited States, and excluding from consideration all sums ing or paid by said company for interest upon any other rtion of its indebtedness, but that said provision should t affect any right of the United States or of said Rail- ad Company prior to June 30, 1878, and by the *second* ction of said act it was further provided that the whole nount of compensation, which might, from time to time, e due to the said Railroad Company for services rendered the Government should be retained by the said United tates, one-half thereof to be applied to the interest paid r to be paid by the United States upon bonds so issued y it as aforesaid, to said corporation, and the other one- alf thereof be turned into the sinking fund provided by aid act, for the use therein mentioned, and further that here should be established in the treasury of the United States a sinking fund which should be invested by the Secretary of the Treasury, and the semi-annual income hereof in like manner re-invested, and that the same hould accumulate and be disposed of as mentioned n said act. That there should be carried to the redit of the said sinking fund, on the first day of February in each year, the one-half of the compensation for services therein named rendered for the Government by the said Union Pacific Railroad Company not applied in liquidation of interest, and in addition thereto said company should on said day in each year pay into the Treasury to the credit of said sinking fund the sum of eight hundred and fifty thousand dollars, or so much thereof as should be necessary to make the five per cent. of the net earnings of its said road payable to the United States under said act of 1862, and the whole sum earned by the company as compensation for services rendered by the United States, together with the sum by said section required to be paid, amount in the aggregate to twenty- five per centum of the whole net earnings of said railway

company ascertained and defined as thereinbefore provided for the year ending on the 31st day of December next preceding.

And further, by the *fifth* section of the said act it was provided that whenever it should be made to appear to the Secretary of the Treasury by said company that seventy-five per cent. of its net earnings, as they had been defined for any current year, are or were insufficient to pay the interest for each year upon the obligations of said company, in respect of which obligations there might exist a lien prior to that of the United States, and that said interest had been paid out of the said net earnings, the said Secretary was authorized and it was made his duty to remit for said current year so much of the twenty-five per cent. of the net earnings required to be paid into the sinking fund aforesaid as had been thus applied and used in payment of interest aforesaid, and by the *seventh* section of said act it was further provided that said sinking fund should at the maturity of the said bonds, be applied to the payment and satisfaction thereof, and of all interest paid by the United States and not reimbursed subject to the provisions of the *eighth* section of the act, and by the said *eighth* section it was further provided that said sinking fund should be held for the protection, security and benefit of the lawful and just holders of any mortgage or lien debts of said company lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the said funds so required to be paid into said sinking fund, according to their respective lawful priorities as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund should be entitled thereto in due order; that the provisions of said section should not operate or be held to impair any existing legal right, except in the manner in said act provided, of any mortgage, lien or other creditor of said company nor to excuse said company from the duty of discharging out of other funds its debts to any creditor except the United States.

And by the *ninth* section of said act it was further provided that all sums due to the United States from said company, whether payable presently or not, and all sums required to be paid to the United States or into the treas-

ry or into said sinking fund under said act, or any other
t of Congress, were thereby declared to be a lien upon
ne property, estate, rights and franchises of every de-
ription granted or conveyed by the United States to said
ompany, and also upon all the estate and property, real,
ersonal and mixed, assets and income of the said company
rom whatever source derived, subject to any lawful para-
mount lien or claim thereon, but that said section should
ot be construed to prevent said company from using and
disposing of any of its property or assets in the ordinary,
proper and lawful course of its current business, in good
aith and for a valuable consideration.

And further by the *tenth* section of said act it was made the duty of the Attorney-General of the United States to enforce all the rights of the United States under said act, and any other act, by proper proceeding against the said railroad company, and in any suit or proceeding that might be so commenced against said company in respect of matters arising under said act or under the acts or rights thereinbefore mentioned or referred to therein, it should be the duty of the Court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness or other matters not affecting the substantial rights and duties arising out of the matters and acts in said act stated and referred to.

And further, by the *eleventh* section of the said act it was provided that if said railroad company should fail to perform all and singular the requirements of said act and said other acts, therein mentioned, or any other act relating to the said company for the period of six months after such performance might be due, such failure should operate as a forfeiture of all the rights, privileges and grants and franchises derived or obtained by it from the United States, and that it should be the duty of the Attorney-General to cause the said forfeiture to be judicially enforced.

And by the *twelfth* section of said act, it was further provided that nothing in said act should be construed or taken to affect or impair the right of Congress at any time thereafter further to alter, amend or repeal said acts, and the said act approved May 7th, 1878, should be subject to alteration, amendment or repeal as in the opinion of Congress, justice or the public welfare might require, and that

nothing therein contained should be held to deny or impair any right or remedy then existing in favor of the United States.

And the complainants further state that on the 3d of March, 1887, Congress adopted, and the President approved an act entitled—

"An Act authorizing an investigation of the books, accounts and methods of railroads which have received aid from the United States, and for other purposes,"

and that by the *fourth* section thereof it was provided that whenever, in the opinion of the President it should be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage or other interest in any of the property of any or all the said companies, upon which a lien, mortgage or other incumbrance paramount to the right, title or interest of the United States for the same property or any part of the same that might exist, and then be lawfully liable to be enforced, the Secretary of the Treasury should under the direction of the President redeem or otherwise clear off such paramount lien, mortgage or other incumbrance by paying the sums lawfully due in respect thereof out of the treasury, and the United States should thereupon become and be subrogated to all rights and securities theretofore pertaining to the debt, mortgage, lien or other incumbrance in respect of which said payment should be made, and further that it should be the duty of the Attorney-General under the direction of the President, to take such steps, and further proceedings, in the courts and otherwise, as should be needful to redeem such lien, mortgage or other incumbrance, and to protect and defend the rights and interests of the United States in respect of the matters in said section mentioned, and to take steps to foreclose any mortgage or liens of the United States on any such railroad property.

And the complainants further state that in pursuance of the acts aforesaid, the said Union Pacific Railroad Company, in the year 1865, determined to make and execute its bonds in the sum of one thousand dollars each, and payable in thirty years after the date thereof, with interest payable semi-annually, at the rate of six per centum per annum from date, to an amount equal to but not exceed-

ng per mile the amount as aforesaid provided to be issued y the Government of the United States to aid in the con- truction of said railroad, and to secure the same by a irst mortgage upon said line of railroad and telegraph, nd in pursuance of said determination said railroad com- pany issued its bonds of the form, tenor and date afore- said, and to secure the same the said Union Pacific Rail- road Company determined to make, execute and deliver, and did make, execute and deliver a mortgage to Edwin D. Morgan and Oakes Ames, as trustees, both of whom have since departed this life, and there have been substi- tuted in place of said trustees in pursuance of law and are now acting as such, the defendant F. Gordon Dexter and Oliver Ames, Second, and by said mortgage said Union Pacific Railroad Company conveyed to said trustees, all and singular said railroad and telegraph line and all its real and personal estate, franchises and property then owned or that thereafter might be acquired by said rail- road company necessary to said railroad and telegraph line so running and operating the same.

And the complainants further state that they are in- formed and believe that the said railroad company, at the time of the execution of the said mortgage, did issue and since has issued, negotiated, sold and delivered said mort- gage bonds to the total amount of twenty-seven million, two hundred and twenty-nine thousand dollars ($27,299,- 000), of which the principal sum of six million, four hun- dred and seventy-five thousand dollars ($6,475,000), which matured on January 1st, 1896, and one million five hund- red and ninety-eight thousand dollars ($1,598,000), which matured on January 1st, 1897, are in default, together with interest on the entire amount of said bonds accrued since July 1st, 1896; and that the holders of said bonds and the said trustees claim that under and in pursuance of the provisions of law hereinbefore recited and stated, said mortgage takes precedence of and is superior to the said subsidy lien of the United States of America, and that said mortgage securing said bonds is the first lien and incumbrance upon said premises and railroad property, and each and every part thereof.

And the complainants further state that subordinate only to the lien of any first mortgage given by said com- pany in conformity with the provisions of the *tenth* and

*eleventh* sections of the said act approve July 2, 1864, the subsidy lien created by the laws aforesaid and taking effect *ipso facto* upon the issue of said subsidy bonds, is the first lien and incumbrance upon all of said railroad property and appurtenances in favor of these complainants.

And the complainants further state that, beginning February 1st, 1866, under and in pursuance of the laws aforesaid, there were issued and delivered by the Secretary of the treasury, to the said company, bonds of the United States of the tenor and effect described in said acts approved July 1st, 1862, and July 2, 1864, to the total amount of twenty-seven million, two hundred and thirty-six thousand, five hundred and twelve dollars ($27,236,512), the issue of which bonds and delivery to the company did, by force of law, *ipso facto*, constitute a first mortgage (except only as subordinated by said last-mentioned act to the lien of the first mortgage bonds issued by the company as aforesaid), on the whole line of the railroad and telegraph line together with the equipment, fixtures and property of every kind and description, a list of which bonds so issued and delivered to the said company, stating the date of issue, the commencement of interest, the amount of each delivery and the maturity of the bonds is hereto annexed, marked Exhibit A, and is thus made a part of this bill of complaint, and complainants aver that the statements of said exhibit are true and pray that the same may be taken as part of this bill of complaint as if fully averred and stated herein instead of by exhibit.

And the complainants further state that at or about the time of their issue, all of said subsidy lien bonds were sold by the said company and are now outstanding, except as far as paid by the United States, and are wholly unpaid, except that the interest thereon has, so far as the same has matured, been paid by the United States of America, and that the principal of all of said bonds which have matured until the date of the filing of this bill, has been paid by the said United States only, that no part of the cost or expense of said payment has been contributed by the said company, and no payment has been made or security given on account of the principal of said subsidy bonds by the said company, other than as may be held to have been accomplished through the agency of the sinking fund hereinafter described, and that the Secretary of the

Treasury has required said company to redeem said bonds so far as the same have accrued and grown due, but with said demand the said company has refused and failed to comply.

And the complainants further aver that by an act of Congress, approved February 24th, 1871, entitled—

"An act to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri river at Omaha, Nebraska, and Council Bluffs, Iowa,"

it was enacted for the more perfect connection of any railroads that are or shall be constructed to the Missouri river at or near Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company should be and it was thereby authorized to issue such bonds and to secure the same by mortgage on the bridge and approaches and appurtenances as it might deem needful to construct and maintain the bridge over such river and the tracks and depots required to perfect the same as then authorized by the law of Congress, and that said bridge might be so constructed as to provide for the passage of ordinary vehicles and travel, and said company might collect tolls and charges for the use of the same, and that for the use and protection of said bridge and property the Union Pacific Railroad Company should be empowered, governed and limited by the provisions of the act entitled—

"An act to authorize the construction of certain bridges and to establish them as post roads, approved July 25th, 1866."

so far as the same is applicable, provided that nothing in said act shall be so construed as to change the eastern terminus of the Union Pacific Railroad Company from the place where it was then fixed under existing laws, nor to release said Union Pacific Railroad Company or its successors from its obligation as established by existing laws, provided further that Congress should, at all times, have power to regulate said bridge, and the rates for transportation of freight and passengers over the same, and the local travel in said act provided for, and that the amount of bonds by said act authorized should not exceed two and one-half million dollars; provided further that if said

bridge should be constructed as a draw bridge, the same should be constructed with spans of not less than two hundred feet in length to the clear on each side of the central or pivot pier of the drawer.

And complainants aver that said bridge was built from Council Bluffs to Omaha, as part of said Union Pacific Railroad, under and by virtue of the authority of the acts approved July 1, 1862, and July 2d, 1864, and of the aforesaid act approved February 24th, 1871, and that mortgage bonds were issued as described in said act approved February 24th, 1871, which the defendants J. Pierpont Morgan and Elisha Atkins, as trustees, and the Central Trust Company, claim to be a lien or incumbrance upon said bridge.

And these complainants further state that in compliance with the mandate of law, and by force of the agencies provided for that purpose by the said laws of the United States, in addition to the sinking fund hereinafter described, large sums of money have been received by the United States and credited to the company towards and in partial reimbursement of the interest paid by the United States as aforesaid, and complainants hereto annex, marking the same "Exhibit B," and pray that it may be taken as part of this bill of complaint, as if fully recited and averred herein, and not by way of exhibit, a true statement of all the interest paid by the United States on the said bonds issued in pursuance of said acts to the Union Pacific Railroad Company, and of all the sums so received by the United States, showing also the balance of interest due to the United States on said account at the date of the filing of this bill, being the net sum of twenty-nine millions, nine hundred and sixty-four thousand, six hundred and sixty-six $\frac{39}{100}$ ($29,964,666.39) dollars.

And the complainants further aver that under and in pursuance of the provisions of the act approved May 7th, 1878, there have been received in the Treasury of the United States, and invested by the Secretary of the Treasury, large sums of money by way of sinking fund for the security of the United States in its said payments and liability to pay said bonds and interest, in addition to the *ipso facto* mortgage described in said acts of July 1st, 1862, and July 2d, 1864.

A true statement of the said sinking fund to the date of filing of this bill containing particulars of the amounts received into said sinking fund and the amounts invested, and the securities and cash in which the same is now held by the Treasury Department of the United States for the purposes aforesaid is hereto attached, marked Exhibit C, and complainants pray that the same may be taken and held to be part of this bill, with the same force and effect as if it were fully recited herein and not by way of exhibit.

And complainants further aver that of the said unpaid bonds so issued under the said acts approved July 1st, 1862 and July 2d, 1864, the whole amount will accrue and grow due by the United States to the holders of the said bonds at the respective dates of future maturity, as follows: On the first day of January, 1898, to the amount of fifteen millions, nine hundred and nineteen thousand, five hundred and twelve dollars, ($15,919,512), and on the first day of January, 1899, to the amount of three millions, one hundred and fifty-seven thousand dollars ($3,157,000), and that all other amounts of principal have matured and been paid by the United States, as follows, to-wit: on the first day of February, 1896, to the amount of four millions, three hundred and twenty thousand dollars ($4,320,000), and on the first day of January, 1897, to the amount of three millions, eight hundred and forty thousand dollars ($3,840,000), which two last named sums together with the balance of interest as aforesaid, are now due to the United States of America, and that the value of the securities in the sinking fund aforesaid is not sufficient for their reimbursement and payment, and that the United States of America have no other remedy for the payment of the residue remaining due after applying the said sinking fund upon said past due principal and interest other than the railway and equipment aforesaid, with their appurtenances, and that the amounts to become due hereafter, and the interest thereon, are wholly unsecured, except as aforesaid.

And the complainants further aver that heretofore, and on the 13th day of October, 1893, in a suit in equity brought in this Court by said Oliver Ames, and Samuel Carr, executors of the last will and testament of Frederiok L. Ames, deceased, and Peter B. Wyckoff and Edwin F.

Atkins, complainants, against the Union Pacific Company and others, for relief, including the appointment of receivers of said railway and appurtenances, S. H. H. Clark, Oliver W. Mink and E. Ellery Anderson were, in accordance with the prayer of said bill, appointed receivers by this Court of said defendant, the Union Pacific Railway Company, and of all the said railroad, equipment and assets described in said bill, for a more full and detailed description of which reference is now had and made to the said order appointing the receivers of record in said cause in this Court.

And complainants aver that afterwards on the 13th day of November, 1893, upon the petition of the Attorney-General of the United States and by the assent of the complainants and defendants in said cause, it was ordered, adjudged and decreed that John W. Doane and Frederic R. Coudert should be, and they were thereby appointed additional receivers of this Court of said property.

And these complainants aver that said Clark, Mink, Anderson, Coudert and Doane, so appointed as such Receivers, duly qualified and entered upon the performance of their duties, and took possession of all said property and are in possession thereof, subject to the qualification hereinafter stated and are in control of the same, subject to the orders of this Court.

And complainants further aver that on the 21st day of January, 1895, a bill in chancery was filed in this court, by the said F. Gordon Dexter and Oliver Ames, trustees, against the Union Pacific Railroad Company, the United States of America, and others, setting up and averring the execution, delivery and outstanding character of the said mortgage hereinbefore described originally made to the said Edwin D. Morgan and Oakes Ames, as trustees, and of which the said F. Gordon Dexter and Oliver Ames, now claim to be trustees in succession as aforesaid, and the execution, negotiation and sale of bonds under the same as aforesaid, and their outstanding character, and that certain interest on the said bonds was unpaid and are in default, and thereby the said complainants Dexter and Ames claim superiority in lien to the lien of the United States and that the said bonds and mortgage were and are in default, and they were and are entitled to foreclose and

sell said property free and clear of all claims, liens and incumbrances whatever and out of the proceeds to be reimbursed for the benefit of the said bondholders in the money due and to become due upon the said bonds and secured by said mortgage.

And complainants aver that the said Dexter and Ames, trustees, as such complainants, made the United States of America defendants to said bill of complaint, but that the said United States of America have not appeared and are not parties to said cause, and have taken no part in the prosecution thereof. That the said bill is pending in this Court against the other parties thereto, and is wholly undetermined:—that by orders of this Court, said Receivership has been extended to said cause, with the same force and effect as if said Receivers had been originally appointed therein.

And the complainants aver that the defendant, Union Trust Company of New York, is a corporation organized under the laws of the State of New York; that said company as trustee has, or claims to have, some lien upon or interest in the property, or some part of the property, described aforesaid, and upon which the said *ipso facto* mortgage to the United States of America rests and is charged by force of the issue of said subsidy lien bonds, the same arising out of a certain mortgage made by the said Union Pacific Railway Company to said Union Trust Company as trustee, dated on the 18th day of December, 1873, and known as the Sinking Fund Indenture of the said Union Pacific Railroad Company; that the defendant J. Pierpont Morgan and the defendant Edwin F. Atkins as trustees have, or claim to have, some lien upon or interest in some part of the property embraced in and covered by the said *ipso facto* mortgage in favor of the United States of America, securing the reimbursement to the United States of the payment of said subsidy bonds aforesaid, the same arising out of a certain mortgage or deed of trust made by the Union Pacific Railroad Company to J. Edgar Thomson (deceased), and to said J. Pierpont Morgan and Elisha Atkins, as trustees, dated on the first day of April, 1871, and known as the Omaha Bridge Mortgage, and arising out of an agreement between the Union Pacific Railroad Company and said Thomson, Morgan and

Atkins, dated on the 27th day of December, 1871, and known as the Supplemental Omaha Bridge Mortgage.

That the defendant the Central Trust Company of New York is a corporation organized and existing under the laws of the State of New York, and that said Central Trust Company has or claims some lien upon or interest in a part of the property embraced within said *ipso facto* mortgage in favor of the United States of America securing the reimbursement to the United States of the payment of said subsidy bonds aforesaid, the same arising out of a certain mortgage or deed of trust made by the Union Pacific Railway Company to the Central Trust Company of New York, as trustee, dated on the first day of October, 1885, and known as the Omaha Bridge Renewal Mortgage, or otherwise.

WHEREFORE and in consideration of the premises and that the United States of America, complainants, are remediless at law and entitled to relief in equity, come the United States of America and pray as follows:

*First*, That the Union Pacific Railway Company, F. Gordon Dexter and Oliver Ames, as trustees, Union Trust Company of New York, as trustee, J. Pierpont Morgan and Edwin F. Atkins as trustees, and the Central Trust Company of New York, as trustee, and E. Ellery Anderson, S. H. H. Clark, Oliver W. Mink, Frederic R. Coudert and John W. Doane, as Receivers, be made defendants, and process of subpœna be issued against and served upon them, or that otherwise according to law and the rules of this Court, they be notified to appear as defendants hereto and required to answer in the premises all and singular the averments of this bill of complaint.

*Second.*—That the equities arising upon the facts aforesaid between the United States of America and the said several defendants be ascertained by decree of this Court, and that for the purposes of relief it be ascertained, adjudged and decreed, what are the several priorities of lien upon said properties in favor of the said several parties, and how much money will become and grow due at and after the date of said decree to the said several lien holders in their order of preference, and after giving all proper credits and charging all proper debits to each of the said several parties.

*Third.*—That the lien of the United States be adjudged to be in its proper order a lawful incumbrance and claim upon all the premises, property and franchises owned originally by the said Union Pacific Railroad Company, and now owned and controlled by the said Union Pacific Railway Company and in possession of said Receivers and subject to the order of this Court.

*Fourth.*—That in ascertaining the priorities of the several parties, it shall be determined by the Court which of the same, if any, have and enjoy liens and incumbrances prior in lien upon any part, and if any, upon what part of said premises and property, to the lien of the United States, and that provision be made for protecting the said prior lien if any be ascertained, and for determining to what extent and for what amount, if any, the same is entitled to claim and enjoy rights and privileges superior to or not enjoyed by the United States of America, so that at any sale to be made, it may be known and clearly appear subject to the payment of what sum or sums of money, if any, said premises and franchises are to be sold.

*Fifth.*—That through the agency of a Master in Chancery or otherwise, a true and accurate description be made of all the property of the said Union Pacific Railway subject to the said subsidy or *ipso facto* lien of the United States and liable to be sold to reimburse the said United States of America in the sums due and to become due to it as aforesaid.

*Sixth.*—That the value of the said sinking fund be ascertained, and that provision be made for the sale and reduction thereof to money and its application as a credit upon said debt of said railway company to the United States at the proper dates and times of credit.

*Seventh.*—That upon the non-payment within a reasonable time to be fixed by the Court, of the amount which may be ascertained by the decree of this Court to be due and owing to the United States of America after giving all proper credits as aforesaid, with interest, said *ipso facto* or subsidy lien mortgage and all statutory rights and claims of the United States may be foreclosed and the premises and franchises embraced therein sold, free and discharged from all claims of all parties to this cause, except such, if any, as may be found to be prior in lien and

incumbrance to the subsidy lien of the United States of America, aforesaid, and that the proceeds of said sale may be paid into the treasury of the United States to the credit of said Company, on account of said amount of said bonds and interest due and to become due, for which said railroad is bound to reimburse the complainants as aforesaid.

*Eighth.*—That Receivers of said railroad property, equipment, and franchises be appointed, or that the existing receivership be extended to this cause, for the protection and preservation of the interests of all parties hereto.

*Ninth.*—And that the complainants may have such other and further relief as in equity and good conscience they shall appear to be entitled to.

JUDSON HARMON,
Attorney General of the United States.

GEO. HOADLY,
Special Assistant to the Attorney General in the Matter of the Union Pacific Railway Company.

JOHN C. COWIN,
Special Counsel for the United States.

# EXHIBIT A.

*Statement showing to whom Delivered, the Dates of Issue, Maturity, etc.*

*Union Pacific Railroad Company.*

| Maturity of Bonds | Date of Issue | To whom delivered | Commencement of Interest | Amount | Total |
|---|---|---|---|---|---|
| February 1, 1896 ..... | Feb. 1, 1866 | ..... | Feb. 1, 1866 | 640,000 | |
| | May 7, 1866 | ..... | May 7, 1866 | 400,000 | |
| | June 26, 1866 | ..... | June 26, 1866 | 640,000 | |
| | July 13, 1866 | ..... | July 13, 1866 | 320,000 | |
| | Aug. 9, 1866 | ..... | Aug. 9, 1866 | 560,000 | |
| | Sep. 11, 1866 | ..... | Sep. 11, 1866 | 720,000 | |
| | Oct. 15, 1866 | ..... | Oct. 13, 1866 | 560,000 | |
| | Nov. 8, 1866 | ..... | Nov. 7, 1866 | 480,000 | |
| January 1, 1897 ..... | Jan. 9, 1867 | ..... | Jan. 8, 1867 | 560,000 | |
| | June 11, 1867 | ..... | June 10, 1867 | 640,000 | |
| | July 6, 1867 | ..... | July 6, 1867 | 640,000 | |
| | Aug. 29, 1867 | ..... | Aug. 29, 1867 | 560,000 | |
| | Oct. 2, 1867 | ..... | Oct. 2, 1867 | 560,000 | |
| | Nov. 5, 1867 | ..... | Nov. 5, 1867 | 560,000 | |
| | Dec. 13, 1867 | ..... | Dec. 13, 1867 | 320,000 | |
| January 1, 1898 ..... | Jan. 28, 1868 | ..... | Jan. 27, 1868 | 957,000 | |
| | May 18, 1868 | ..... | May 16, 1868 | 960,000 | |
| | May 19, 1868 | ..... | May 18, 1868 | 960,000 | |
| | June 12, 1868 | ..... | June 12, 1868 | 960,000 | |
| | June 17, 1868 | ..... | June 18, 1868 | 960,000 | |
| | July 23, 1868 | ..... | July 22, 1868 | 960,000 | |
| | July 25, 1868 | ..... | July 24, 1868 | 1,841,000 | |
| | Aug. 12, 1868 | ..... | Aug. 11, 1868 | 640,000 | |
| | Aug. 29, 1868 | ..... | Aug. 28, 1868 | 640,000 | |
| | Sep. 7, 1868 | ..... | Sep. 7, 1868 | 1,280,000 | |
| | Sep. 23, 1868 | ..... | Sep. 23, 1868 | 640,000 | |
| | Oct. 22, 1868 | ..... | Oct. 21, 1868 | 640,000 | |
| | Nov. 20, 1868 | ..... | Nov. 19, 1868 | 640,000 | |
| | Dec. 7, 1868 | ..... | Dec. 7, 1868 | 1,280,000 | |
| | Dec. 15, 1868 | ..... | Dec. 14, 1868 | 640,000 | |
| | Dec. 17, 1868 | ..... | Dec. 16, 1868 | 640,000 | |
| | Dec. 24, 1868 | ..... | Dec. 23, 1868 | 640,000 | |
| | Dec. 24, 1868 | ..... | Dec. 24, 1868 | 640,000 | |
| | July 15, 1870 | ..... | Nov. 21, 1868 | 1,512 | |
| January 1, 1899 ..... | Jan. 29, 1869 | ..... | Jan. 29, 1869 | 640,000 | |
| | Feb. 10, 1869 | ..... | Feb. 10, 1869 | 1,280,000 | |
| | July 22, 1869 | ..... | July 16, 1869 | 640,000 | |
| | Nov. 10, 1869 | ..... | July 16, 1869 | 437,000 | |
| | July 14, 1870 | ..... | July 16, 1869 | 160,000 | |
| Total ... | ..... | ..... | ..... | ..... | 27,236,512 |

# EXHIBIT B.

*Statement showing Interest paid by the United States on Bonds Issued to the Union Pacific Railway Company, Interest repaid by the Company and Balance of Interest due the United States.*

| | | Interest paid by the United States | Six months period ending | Reimbursed by Railroad Company | | Balance of interest paid by the United States not reimbursed each six months | Reimbursed in excess of interest paid by the United States each six months | Total balance of Interest paid not reimbursed |
|---|---|---|---|---|---|---|---|---|
| | | | | By ½ Transportation each six months ending | By 5% net earnings | | | |
| Total amount of bonds Issued $27,236,512 | July 1, 1866 | 19,917.09 | | | | 19,917.09 | | 19,917.09 |
| | Jan. 1, 1867 | 97,755.65 | | | | 97,755.65 | | 117,672.74 |
| | July 1, 1867 | 147,826.87 | Dec. 31, 1867 | 249,191.98 | | | 101,365.11 | 16,307.63 |
| | Jan. 1, 1868 | 210,562.28 | June 30, 1868 | 275,661.05 | | | 65,098.77 | 48,791.14 |
| | July 1, 1868 | 288,593.86 | Dec. 31, 1868 | 194,361.84 | | 94,232.02 | | 45,440.88 |
| | Jan. 1, 1869 | 549,109.77 | June 30, 1869 | 187,231.24 | | 361,878.53 | | 407,319.41 |
| | July 1, 1869 | 768,104.37 | Dec. 31, 1869 | 200,981.43 | | 567,122.94 | | 974,442.35 |
| | Jan. 1, 1870 | 809,859.96 | June 30, 1870 | 141,149.33 | | 627,710.63 | | 1,602,152.98 |
| | July 1, 1870 | 821,641.20 | Dec. 31, 1870 | 145,375.46 | | 676,265.74 | | 2,278,418.72 |
| | Jan. 1, 1871 | 817,095.36 | June 30, 1871 | 320,350.82 | | 496,744.54 | | 2,775,163.26 |
| | July 1, 1871 | 817,095.36 | Dec. 31, 1871 | 209,130.82 | | 607,964.54 | | 3,383,127.80 |
| | Jan. 1, 1872 | 817,095.36 | June 30, 1872 | 217,139.35 | | 599,956.01 | | 3,983,083.81 |
| | July 1, 1872 | 817,095.36 | Dec. 31, 1872 | 115,302.58 | | 701,792.78 | | 4,684,876.59 |
| | Jan. 1, 1873 | 817,095.36 | June 30, 1873 | 86,143.77 | | 730,951.59 | | 5,415,828.18 |
| | July 1, 1873 | 817,095.36 | Dec. 31, 1873 | 228,459.67 | | 588,635.69 | | 6,004,463.87 |
| | Jan. 1, 1874 | 817,095.36 | June 30, 1874 | 204,694.76 | | 612,400.60 | | 6,616,864.47 |
| | July 1, 1874 | 817,095.36 | Dec. 31, 1874 | 243,981.38 | | 573,113.98 | | 7,189,978.45 |
| | Jan. 1, 1875 | 817,095.36 | June 30, 1875 | 444,670.66 | | 372,424.70 | | 7,562,403.15 |
| | July 1, 1875 | 817,095.36 | Dec. 31, 1875 | 438,889.51 | | 378,205.85 | | 7,940,609.00 |
| | Jan. 1, 1876 | 817,095.36 | June 30, 1876 | 135,989.12 | | 681,106.24 | | 8,621,715.24 |
| | July 1, 1876 | 817,095.36 | Dec. 31, 1876 | 47,166.75 | | 769,928.61 | | 9,391,643.85 |
| | Jan. 1, 1877 | 817,095.36 | June 30, 1877 | 660,170.15 | | 156,925.21 | | 9,548,569.06 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Jan. 1, 1878 | 817,095.36 | June 30, 1878 | 718,767.11 | | 524,751.45 | | 10,641,681.95 |
| July 1, 1878 | 817,095.36 | Dec. 31, 1878 | 292,343.91 | | | 355,748.16 | 10,285,933.79 |
| Jan. 1, 1879 | 817,095.36 | June 30, 1879 | 1,172,843.52 | | 720,826.88 | | 11,006,760.67 |
| July 1, 1879 | 817,095.36 | Dec. 31, 1879 | 96,268.48 | | 427,937.85 | | 11,433,698.52 |
| Jan. 1, 1880 | 817,095.36 | June 30, 1880 | 390,157.51 | | 628,642.91 | | 12,062,341.43 |
| July 1, 1880 | 817,095.36 | Dec. 31, 1880 | 188,452.45 | | 674,153.62 | | 12,736,495.05 |
| Jan. 1, 1881 | 817,095.36 | June 30, 1881 | 142,941.74 | | 725,679.22 | | 13,462,174.27 |
| July 1, 1881 | 817,095.36 | Dec. 31, 1881 | 91,416.14 | | 590,852.46 | | 14,053,026.73 |
| Jan. 1, 1882 | 817,095.36 | June 30, 1882 | 226,242.90 | | 454,644.11 | | 14,507,670.84 |
| July 1, 1882 | 817,095.36 | Dec. 31, 1882 | 362,451.25 | | 699,791.34 | | 15,207,462.18 |
| Jan. 1, 1883 | 817,095.36 | June 30, 1883 | 117,304.02 | | 228,249.41 | | 15,435,711.59 |
| July 1, 1883 | 817,095.36 | Dec. 31, 1883 | 588,845.95 | | 333,126.39 | | 15,768,837.98 |
| Jan. 1, 1884 | 817,095.36 | June 30, 1884 | 483,968.97 | | 327,353.54 | | 16,096,191.52 |
| July 1, 1884 | 817,095.36 | Dec. 31, 1884 | 489,741.82 | | 382,202.62 | | 16,478,394.14 |
| Jan. 1, 1885 | 817,095.36 | June 30, 1885 | 151,729.75 | 283,162,99 | 634,274.53 | | 17,112,668.67 |
| July 1, 1885 | 817,095.36 | Dec. 31, 1885 | 182,820.83 | | 649,866.65 | | 17,762,535.32 |
| Jan. 1, 1886 | 817,095.36 | June 30, 1886 | 167,228.71 | | 483,645.21 | | 18,246,180.53 |
| July 1, 1886 | 817,095.36 | Dec. 31, 1886 | 178,203.56 | 155,246.59 | 622,025.42 | | 18,868,205.95 |
| Jan. 1, 1887 | 817,095.36 | June 30, 1887 | 195,069.94 | | 664,165.06 | | 19,532,371.01 |
| July 1, 1887 | 817,095.36 | Dec. 31, 1887 | 152,930.30 | | 623,151.10 | | 20,155,522.11 |
| Jan 1, 1888 | 817,095.36 | June 30, 1888 | 193,944.26 | | 686,501.83 | | 20,842,023.94 |
| July 1, 1888 | 817,095.36 | Dec. 31, 1888 | 130,593.53 | | 672,110.51 | | 21,514,134.45 |
| Jan. 1, 1889 | 817,095.36 | June 30, 1889 | 144,984.85 | | 628,768.64 | | 22,142,903.09 |
| July 1, 1889 | 817,095.36 | Dec. 31, 1889 | 188,326.72 | | 652,418.20 | | 22,795,321.29 |
| Jan. 1, 1890 | 817,095.36 | June 30, 1890 | 164,677.16 | | 602,354.19 | | 23,397,675.48 |
| July 1, 1890 | 817,095.36 | Dec. 31, 1890 | 214,741.17 | | 576,244.89 | | 23,973,920.37 |
| Jan. 1, 1891 | 817,095.36 | June 30, 1891 | 240,850.47 | | 602,505.27 | | 24,576,425.64 |
| July 1, 1891 | 817,095.36 | Dec. 31, 1891 | 214,590.09 | | 550,745.25 | | 25,127,170.89 |
| Jan. 1, 1892 | 817,095.36 | June 30, 1892 | 266,350.11 | | 532,343.70 | | 25,659,514.59 |
| July 1, 1892 | 817,095.36 | Dec. 31, 1892 | 284,751.66 | | 571,583.78 | | 26,231,098.37 |
| Jan. 1, 1893 | 817,095.36 | June 30, 1893 | 245,511.58 | | 583,206.13 | | 26,814,304.50 |
| July 1, 1893 | 817,095.36 | Dec. 31, 1893 | 233,889.23 | | 549,056.05 | | 27,363,360.55 |
| Jan. 1, 1894 | 817,095.36 | June 30, 1894 | 268,039.31 | | 545,618.88 | | 27,908,979.43 |
| July 1, 1894 | 817,095.36 | Dec. 31, 1894 | 271,476.48 | | 546,334.26 | | 28,455,313.69 |
| Jan. 1, 1895 | 817,095.36 | June 30, 1895 | 270,761.10 | | 536,488.98 | | 28,991,802.67 |
| July 1, 1895 | 817,095.36 | Dec. 31, 1895 | 280,606.38 | | | | |
| Jan. 1, 1896 | 817,095.36 | | | | 567,688.21 | | 29,559,490.88 |
| Feb. 1, 1896 | 22,014.25 | June 30, 1896 | 271,421.40 | | | | 29,964,666.39 |
| July 1, 1896 | 687,495.36 | Dec. 31, 1896 | 282,319.85 | | 405,175.51 | | |

## EXHIBIT "C."

*Statement of Bonds in Sinking Fund of the Union Pacific Railroad, January 16, 1897.*

| | Not Due | *Due but unpaid |
|---|---|---|
| U. S. bonds 5% of 1904 | $915,750 | |
| " " 6% of 1898 | 523,000 | |
| " " 6% of 1899 | 41,000 | |
| First Mortgage Bonds: | | |
| Union Pacific due Jan. 1, 1896 | | $929,000 |
| " " " " 1, 1897 | | 350,000 |
| " " " July 1, 1897 | 473,000 | |
| " " " Jan. 1, 1898 | 1,534,000 | |
| " " " July 1, 1898 | 2,536,000 | |
| " " " Jan. 1, 1899 | 545,000 | |
| Central " " Jan. 1, 1898 | 2,229,000 | |
| Kansas " " Aug. 1, 1895 | | 549,000 |
| " " " June 1, 1896 | | 929,000 |
| Sioux City & Pacific " Jan. 1, 1898 | 716,500 | |
| Central Branch " May 1, 1895 | | 1,025,000 |
| Western Pacific " July 1, 1899 | 350,000 | |
| | 9,863,250 | 3,782,000 |
| Total bonds in fund | | $13,645,250 |

*Bonds due but unpaid, held by Assistant Treasurer U. S., New York.

Office of Treasurer U. S.,
January 16, 1897.

Uninvested cash in said Sinking Fund, including $1,011,000 principal of matured Pacific Bonds (Currency Sixes), paid by the United States, $3,608,809.99.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF

THE UNITED STATES OF AMERICA,
Complainants,

AGAINST

THE UNION PACIFIC RAILWAY COMPANY, S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT and JOHN W. DOANE, Receivers; F. GORDON DEXTER and OLIVER AMES, Trustees; UNION TRUST COMPANY OF NEW YORK, Trustee; J. PIERPONT MORGAN and EDWIN F. ATKINS, Trustees; CENTRAL TRUST COMPANY OF NEW YORK, Trustee,
Defendants.

SEPARATE ANSWER OF THE UNION PACIFIC RAILWAY COMPANY TO THE BILL OF COMPLAINT OF THE UNITED STATES OF AMERICA.

This defendant The Union Pacific Railway Company, saving and reserving to itself all manner of benefit or advantage of exception which can or may be had or taken to the said bill of complaint, for answer thereunto says:

FIRST. It admits that The Union Pacific Railroad Company was a corporation created by and existing under the certain laws of the United States, to-wit: An act of the Congress entitled, "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1, 1862, and also an act of the Congress amendatory thereof, approved July 2, 1864, and other acts of the Congress amendatory thereof and supplementary thereto.

SECOND. It further admits that the said The Union Pacific Railway Company as now existing was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said sev-

eral acts of the Congress of the United States by a consolidation of The Union Pacific Railroad Company, The Kansas Pacific Railway Company and The Denver Pacific Railway and Telegraph Company, all of which three companies were named and described in the acts of Congress aforesaid; and that said The Union Pacific Railway Company, so created by said consolidation, thereupon became the successor to each and all of said constituent companies, and thereby became vested with all of the rights, title, interests, properties and franchises of each and all of said constituent companies.

THIRD. It admits its insolvency as alleged in the complaint, and that its property is possessed by and in the hands of Receivers as stated in the bill of complaint. It avers that its general office is in the City of Boston, Massachusetts, but it admits that it has its principal operating office in the City of Omaha, in the State and District of Nebraska.

FOURTH. Answering all those portions of the bill of complaint herein which purport to set forth the terms and effect of certain Acts of the Congress of the United States in said bill mentioned and referred to, this defendant refers to said Acts of Congress themselves for the full terms and provisions thereof, and denies any statement of the purport or effect thereof which shall be found to be inconsistent with the terms of said acts.

FIFTH. This defendant admits that on the 17th day of November, 1863, and on the 7th day of March, 1864, the President of the United States, by executive orders of those dates respectively, fixed the eastern terminus of the Union Pacific Railroad on the Iowa bank of the Missouri River, "at a point on the western boundary of Iowa, east of and opposite to the east line of section ten in township fifteen north of range 13 east of the sixth principal meridian, in the territory of Nebraska."

SIXTH. This defendant admits that, under and in pursuance of the Acts of Congress approved July 1, 1862, and July 2, 1864, and other acts amendatory thereof and supplementary thereto, the said the Union Pacific Railroad Company, in accordance with said acts, built and completed a railroad and telegraph line on the most direct and practicable route and approved by the President of the United States, and equipped the same with rolling

stock from its said eastern terminus, through the States of Nebraska, Wyoming and Colorado to the western terminus, at a connection or junction with the Central Pacific Railroad, at a point about five miles west of Ogden, in the then Territory but now State of Utah, a distance of about 1,042.93 miles, more or less, including a bridge over the Missouri River between Council Bluffs in the State of Iowa and Omaha in the state of Nebraska, aforesaid, and the said Union Pacific Railroad Company, and thereafter its successor the Union Pacific Railway Company, remained in possession thereof and operated the same under said authority until the appointment of Receivers, as in said bill of complaint alleged.

SEVENTH. This defendant further admits that, in pursuance of the acts aforesaid, the said Union Pacific Railroad Company determined in the year 18[illegible] to make and execute its bonds in the sum of one thou[illegible]nd dollars each, payable in thirty years after the date thereof, with interest payable semi-annually at the rate of six per centum per annum from date, to an amount equal, but not exceeding the amount per mile provided to be issued by the acts of the Congress of the United States to aid in the construction of the said railroad, and to secure the same by a first mortgage upon said line of railroad and telegraph, and in pursuance of said determination said railroad company issued its bonds of the form, tenor and date aforesaid, and to secure the same said Union Pacific Railroad Company determined to make, execute and deliver and did make, execute and deliver a mortgage to Edwin D. Morgan and Oakes Ames as trustees, both of whom have since departed this life, and there have been substituted in the place of said trustees in pursuance of law, and are now acting as such, the said defendants F. Gordon Dexter and Oliver Ames, 2d, and by said mortgage the said Union Pacific Railroad Company conveyed to said trustees all and singular the said railroad and telegraph line and all its real and personal estate, franchises and properties then owned, or that might thereafter be acquired, by said railroad company necessary to said raiload and telegraph line or the running and operation of the same.

This defendant further admits that said railroad company, did after the execution of the said mortgage, issue, negotiate, sell and deliver its said mortgage bonds of the

total amount of $27,229,000, of which the principal sums of $6,475,000 matured on January 1, 1896, and $1,598,000 matured on January 1, 1897, are in default, but it avers the truth to be that the interest on the entire amount of said bonds has been fully paid, as far as the same has been requested, to the 1st day of January, 1897.

It further admits that the holders of said bonds and the trustees of the said mortgage claim that under and in pursuance of the provisions of law in said bill recited and stated said mortgage takes precedence of and is superior to the said subsidy lien of the United States of America, and also claim that said mortgage securing said bonds is a first lien and encumbrance upon said premises and railroad property, and each and every part thereof.

EIGHTH. This defendant, further answering in respect of the issuance and delivery by the Secretary of the Treasury of the United States to said Union Pacific Railroad Company of the bonds of the United States of the tenor and effect described in said acts approved July 1, 1862, and July 2, 1864, to the total amount of $27,236,512, admits that the allegations of fact of said bill in that behalf are true.

NINTH. And this defendant further answering admits that at or about the time of their issue to the said railroad company all of the said subsidy lien bonds so issued by the Secretary of the Treasury were sold and delivered by the said The Union Pacific Railroad Company and are now outstanding, except so far as such bonds have been paid by the United States, and that said bonds are wholly unpaid by the said railroad company or by the defendant company, except that the interest thereon has, so far as the same has heretofore matured, been paid by the United States of America, and that the principal of the said subsidy bonds which has matured until the date of the filing of complainant's bill has been paid by said United States only, and that no part of the cost or expense of such payment has been contributed by said company, and it further admits that no payment has been made or additional security given on account of the principal of said subsidy bonds by said company other than as may be held to have been accomplished through the agency of the sinking fund in complainant's bill described,

and it submits, also excepting the security or payments on account of principal or interest resulting from the operation of said Acts of Congress in said bill referred to.

TENTH. This defendant admits that the bridge from Council Bluffs to Omaha was built as part of the Union Pacific Railroad under and by virtue of the authority of the acts approved July 1, 1862, July 2, 1864, and February 24, 1871, and that mortgage bonds were issued as described in said act approved February 24, 1871, which the defendants, J. Pierpont Morgan and Elisha Atkins, as trustees, and the Central Trust Company of New York, as trustee, claim to be liens or encumbrances upon said bridge as stated in the bill of complaint; and this defendant avers that the construction of the said bridge was completed in or about the month of March, 1872.

ELEVENTH. This defendant further answering admits that, in accordance with the requirements of those provisions of the laws of the United States referred to in complainant's bill and those enactments of Congress made since the passage of said Laws of 1862 and 1864 in addition to the sinking fund in said complainant's bill mentioned, large sums of money have been received by the United States and credited to this defendant company towards and in partial reimbursement of the bonds and interest paid by the United States as aforesaid; *but* this defendant, on information and belief, denies that "Exhibit B," attached to the bill of complaint herein, contains a true statement of all the interest paid by the United States, and of the sums paid to and retained by the United States on account of said subsidy bonds and interest, and this defendant prays an account thereof may be taken.

TWELFTH. This defendant admits that there have been received in the Treasury of the United States and invested by the Secretary of the Treasury large sums of money by way of sinking fund for the security, among others, of the United States in its payments and liability to pay said subsidy bonds and interest thereon, in addition to the security of the said *ipso facto* mortgage described in said acts of July 1, 1862, and July 2, 1864, but this defendant has no information enabling it to admit or deny the correctness of the statement Exhibit C, and it calls for proof in this behalf.

THIRTEENTH. This defendant, further answering, admits that of the unpaid subsidy bonds so issued under said acts approved July 1, 1862, and July 2, 1864, the amounts which will hereafter accrue and grow due from the United States to the holders of said bonds is correctly stated in the said complainant's bill as follows: On January 1, 1898, the amount of $15,919,512, and on January 1, 1899, the amount of $3,157,000; and that all other amounts of principal have matured and been paid by the United States as follows, to-wit: On the 1st day of February, 1896, the amount of $4,320,000, and on the 1st day of January, 1897, the amount of $3,840,000.

FOURTEENTH. This defendant admits that on the 13th day of October, 1893, in a certain suit brought in this Court by Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edwin F. Atkins, complainants, against The Union Pacific Railway Company and others, for relief, including the appointment of Receivers of said railway and appurtenances and of all property, real, personal and mixed, of all kinds and descriptions of the Union Pacific Railway Company wherever situated, S. H. H. Clark, Oliver W. Mink and E. Ellery Anderson were, in accordance with the prayer of said bill, appointed Receivers by this Court of said defendant, The Union Pacific Railway Company, and of all the said railroad, equipment, properties and assets described in said bill; that this defendant refers thereto and to the order of appointment of said Receivers for a more full and detailed description of said property; and it also admits that afterwards, on the 13th of November, 1893, upon the petition of the Attorney-General of the United States, and by assent of the complainants and defendants in said cause, it was ordered, adjudged and decreed that John W. Doane and Frederic R. Coudert should be and they were appointed additional Receivers by this Court of the railroads and property in said bill and in the orders of said appointment mentioned and described.

This defendant admits that said Receivers so appointed as such duly qualified and entered upon the performance of their duties, and, as such, took possession of all of the property, real, personal and mixed, of the said Union Pacific Railway Company in said proceedings men-

tioned and described, and admits that said persons have continued to be, and now are, in possession of said properties under the orders of Court as hereinbefore and hereinafter shown, and this defendant avers that on or about the 16th of July, 1894, and thereafter, in a certain cause pending in the Circuit Court of the United States for the District of Kansas, wherein Russell Sage and George J. Gould, trustees, were complainants, and the Union Pacific Railway Company and others were defendants, the same persons were appointed Receivers of all that portion of the properties of The Union Pacific Railway Company embraced in and covered by a certain mortgage made by the Kansas Pacific Railway Company, dated May 1, 1879, and the said Receivers have operated the properties embraced in said mortgage under the provisions of the orders and requirements of said Courts, and this defendant prays leave that it may refer as it may hereafter be advised to the said bill, mortgage and the orders of said Courts in that behalf; and this defendant admits and avers that afterwards on or about the 19th day of November, 1894, in a certain cause brought in the Circuit Court of the United States for the Districts of Colorado and Wyoming by Russell Sage and George J. Gould, trustees; as complainants, against The Union Pacific Railway Company and others, as defendants, the same persons were appointed Receivers of all that portion of the property of The Union Pacific Railway Company embraced by and included in that certain mortgage given by the Denver Pacific Railway and Telegraph Company, and this defendant prays leave to refer to the said bill and mortgage and to the orders and proceedings in said Court had in that behalf in respect of the said properties as it may hereafter be advised; and this defendant admits and avers that on the 21st of January, 1895, in a certain cause pending in this Court, wherein F. Gordon Dexter and Oliver Ames, Second, Trustees, were complainants, and the Union Pacific Railway Company and others were defendants, including the United States of America, a bill was filed setting up and averring the execution and delivery and the outstanding character of the said mortgage hereinbefore described originally made to the said Morgan and Ames as trustees, and of which the said Dexter and Ames are now trustees by succession, and the execution, negotiation and sale of

the bonds under the same as aforesaid, and their outstanding character, and that certain interest on said bonds was then due and in default, and thereby the said Dexter and Ames claimed a superiority in lien to the lien of the United States, and that the said bonds and mortgage were in default, and that they were entitled to foreclose and sell the said property free and clear of all claims, liens and encumbrances whatever, and out of the proceeds to be reimbursed for the benefit of the said bondholders in the moneys due and to become due upon said bonds and secured by said mortgage, in which said proceeding the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert were on the said 21st of January, 1895, appointed Receivers, and that from thence hitherto said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert have continued in the possession of the property mentioned in the said orders of said Courts and have continued to operate the railroads mentioned and described in said last-named bill as Receivers of this Court, and it prays that it may on hearing hereof show and read any of the said bills, orders, or proceedings in any and all of the said several causes as it may hereafter be advised.

This defendant admits that the said Dexter and Ames, trustees, as such complainants, made the United States of America defendants to the said bill of complaint; but it denies that the United States of America have not appeared, and are not parties to said cause, or that they have taken no part in the prosecution thereof, but alleges that since or about the time of the filing of the bill of complaint in this cause the United States of America appeared as defendants in said cause instituted by said Dexter and Ames, trustees, and thereafter duly filed their answer in said cause, in which cause, as this defendant further admits, the bill is pending and undetermined in this Court.

FIFTEENTH. This defendant admits the allegations of the bill of complaint herein relating to the several mortgages to the Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, and the Central Trust Company of New York, as trustees, respectively, and as to the claims of said trustees as to the rights and priorities of their said several mortgages.

This defendant avers that the Union Pacific Railroad Company, in order to construct and equip its road as required by the aforesaid acts of Congress in that behalf, made, executed and delivered under date of November 1st, 1865, its said first mortgage to Edwin D. Morgan and Oakes Ames, trustees, the same hereinbefore referred to.

For the same purposes the said Union Pacific Railroad Company made, executed and delivered, under date of April 16th, 1867, to Cyrus H. McCormick and John Duff, as trustees, a mortgage on all lands granted to the said Union Pacific Railroad Company by an Act of Congress approved July 1, 1862, and the amendatory act approved July 2, 1864, to secure its bonds to an amount not exceeding $10,000 per mile for each mile of the said railroad, and there were issued and sold by the said company under the said mortgage its bonds to the amount of $10,400,000, all of which have since been retired or provided for.

And for like purposes said Union Pacific Railroad Company afterwards—to-wit, on or about September 1st, 1869—made, executed and delivered its indenture to John R. Duff, Benjamin E. Bates and F. Gordon Dexter, trustees, to secure an issue of bonds aggregating $10,000,000, payable on the 1st day of September, 1871, or on the 1st days of March or September in either of the years 1871, 1873 or 1874, at the election, of the said company, and pledged to the said trustees for the payment of the said issue of bonds all the net earnings of the said railroad, after deducting the payments of interest that should fall due upon the first mortgage of the company and also upon the said land grant mortgage bonds but said indenture was not, otherwise than by the said pledge of income, a mortgage upon the railroad or property of the said company.

And for like purposes, as the defendant alleges on information and belief, and for the purpose of paying or retiring the first mortgage bonds, land grant bonds, and income bonds hereinbefore recited, the said Union Pacific Railroad Company on the 18th day of December, 1873, executed its mortgage indenture of that date to the Union Trust Company of New York, trustee, conveying to the said trustee, for the purposes aforesaid, and upon the trusts in the said indenture created and declared, to secure an issue of bonds aggregating $16,000,000 (of which there are now outstanding $3,730,000,) its railroad as therein de-

scribed, and all of its appurtenances, and all and singular the lands granted to the said Union Pacific Railroad Company by the said Acts of Congress of July 1, 1862, and July 2, 1864, and also all the estate, right, title, interest, claim and demand which the said railroad company then owned or was entitled to or thereafter might acquire, own or become entitled to by force of the said Acts of Congress, excepting only such parts and parcels of the said land as had been theretofore sold and conveyed by the said company to purchasers thereof. Defendant states that this last-named mortgage is the mortgage referred to in the bill of complaint as having been made by the Union Pacific Railroad Company to the Union Trust Company of New York, as trustee.

To complete its road and to comply with the requirements of the Acts of Congress in that behalf, the said Union Pacific Railroad Company on the 1st day of April, 1871, made executed and delivered to J. Edgar Thomson, J. Pierpont Morgan and Elisha Atkins, trustees, an indenture of mortgage of that date, commonly known as the Omaha Bridge mortgage to secure 2,500 bonds of $1,000 each, and mortgaged to secure the said issuse of bonds, all and singular, the said bridge over the Missouri River between Omaha and Council Bluffs and all approaches thereof, and the appurtenances thereunto belonging, including all parts and portions of the said bridge then constructed or thereafter to be constructed, and the depots at Council Bluffs and Omaha, as will more fully appear, reference being had to the said mortgage; and afterwards the said company made, executed and delivered a supplemental bridge mortgage to the same trustees, dated the 27th day of September, 1871, making further provisions for the security and payment of the said bonds and the interest thereon. Of said bridge mortgages, J. Pierpont Morgan and Edwin F. Atkins are the surviving trustees, and these are the bridge mortgages referred to in the bill of complaint herein.

And afterwards—to-wit, on the 1st day of October, 1885—this defendant, as the successor of the Union Pacific Railroad Company, for the purpose of funding and renewing the outstanding bonds secured by said existing bridge mortgages, executed to the Central Trust Company of New York, as trustee, a mortgage securing bonds to an amount

which should not exceed $1,250,000. This mortgage is outstanding and unsatisfied, and is the mortgage referred to in the bill of complaint as having been executed by this defendant to the Central Trust Company of New York, as trustee, and embraces the same premises as those embraced and included in the bridge mortgages to the said defendants Morgan and Atkins trustees.

Defendant avers and shows that in order to adjust, determine and adjudge its equities and those of the other parties in the premises, it is entitled in this cause to have an account taken and stated between it and the complainant in respect of all sums and amounts due from it to the complainant, and from the complainant to this defendant, for transportation services rendered by this defendant to complainant and not credited in the accounts in that behalf set out in the bill of complaint, or otherwise, and that there shall be likewise ascertained, determined and adjudged the amounts severally due from this defendant upon each and all of said mortgages, and the nature, character and extent of the property covered by the lien of the said several mortgages, including the lien of the United States, and the respective ranks and priorities of the said several mortgages, and the lien of the United States.

SIXTEENTH. This defendant alleges that by reason of its obligation to repay to the United States the amount of the said subsidy bonds issued and delivered as aforesaid by the complainant, together with all interest thereon which shall have been paid by the United States, it is its right to demand, and it does hereby demand, that all the securities held by the complainants, either under the Act of July 1st, 1862, or of July 2d, 1864, or of May 7th, 1878, shall be included in the decree to be entered in this suit, to the end that said obligations of this defendant shall either be paid in full or that the largest amount possible be realized towards the payment and discharge of the same, and it submits that it is the duty of this defendant to all holders of liens subsequent to the lien of the United States and to its creditors to demand that all of the said securities shall be so applied.

And this defendant further shows that the securities so held by the United States to secure the repayment to it of the subsidy bonds and interest are as follows:

1. By the fifth section of said Act of July 1st, 1862, it is provided that the issue of the said bonds and their delivery to the said company "shall, *ipso facto*, constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which the said bonds may be issued."

That, by the force of said provision, the said railroad and telegraph, rolling stock and fixtures and property in consideration of which the said bonds were issued, were mortgaged to the United States as security for the repayment of the said subsidy bonds and of the interest thereon.

That by Section 10 of the said act of July 2d, 1864, the lien of the said *ipso facto* mortgage, while subordinated to the lien of certain other bonds in the said section specified, was not altered or affected in respect to the description of the property which was embraced in the said *ipso facto* mortgage.

2. That by the force of the provisions contained in the said acts of July 1, 1862, and of July 2d, 1864, as set forth in the complainant's bill herein, it is provided that certain public lands in said act specified and described shall be granted to the Union Pacific Railroad Company, and that under and in pursuance of such provisions this defendant has acquired title to the said lands, has received the patents of the United States for many of them, and is entitled to obtain the patents of the United States for the remainder of such lands.

That by the fifth section of the said act of July 1st, 1862, it is provided that "on the refusal or failure of said company to redeem said bonds or any part of them when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities and appurtenances thereto belonging, and also all lands granted to said company by the United States which at the time of said default shall remain in the ownership of the said company may be taken possession of by the Secretary of the Treasury for the use and benefit of the United States."

And this defendant alleges that by the force of the said provision the lands so granted, subject to all sales or dispositions made of the same by this defendant, or said predecessor company, became in effect mortgaged to the

United States as security for the repayment of the said subsidy bonds and interest, and form part of the security now held by the United States as complained herein for the repayment of said sums of principal and interest.

3. That by the first, second, third, fourth and fifth sections of the act of May 7th, 1878, commonly known as the "Thurman Act," there was established in the Treasury of the United States a sinking fund, to be under the control and direction of the Secretary of the Treasury of the United States, but which sinking fund was and remained, until applied to the purposes directed in the said act, the property of this defendant.

That the condition of the said sinking fund was substantially as set forth in the bill of complaint herein, subject to such additions and alterations as may have occurred since the date of the statement relating thereto, as to all of which this defendant will make proof on the hearing of this cause, and that the provisions of law directing the application to be made of the said sinking fund in the said act contained are as follows:

"That the said sinking fund so established and accumulated shall, at the maturity of the said bonds so respectively issued by the United States, be applied to the payment and satisfaction thereof, according to the interest and proportion of each of said companies in said fund, and of all interest paid by the United States thereon, and not reimbursed, subject to the provisions of the next section.

"That sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargable upon the funds so required to be paid into said sinking fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund may be entitled thereto in due order, but the provisions of this section shall not operate or be held to impair any existing legal right, except in the manner or in this act provided, of any mortgage, lien or other creditor of any of said companies respectively nor

to excuse any of said companies respectively from the duty of discharging, out of other funds, its debts to any creditor except the United States."

And this defendant alleges that the sinking fund so constituted as aforesaid forms part of the security now held by the United States for the repayment and satisfaction, amongst others, of the bonds so issued by the United States and of the interest which may be due thereon.

4. This defendant further shows that the 9th section of the said Act of May 7th, 1878, is as follows:

"That all sums due to the United States from any of said companies respectively, whether payable presently or not, and all sums required to be paid to the United States or into the treasury or into said sinking fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien upon the property, estate, rights and franchises of every description granted or conveyed by the United States to any of said companies respectively or jointly, and also upon all the estate and property, real, personal and mixed, assets and income of the said several railroad companies respectively, from whatsoever source derived, subject to any lawful prior and paramount mortgage lien or claim thereon. But this section shall not be construed to prevent said companies respectively from using and disposing of any of their property or assets in the ordinary, proper and lawful course of their current business, in good faith and for valuable consideration."

And this defendant does not hereby admit that by the force of the said ninth section any lien, right, title or interest whatever was acquired by the United States upon any property, real, personal or mixed, assets or income of this defendant from whatever source derived, and submits all questions which may be raised in relation to such alleged additional lien and interest to this Court for its construction, but it does assert that any such lien, estate or interest, if any were acquired, was acquired and held by the United States solely as additional security for the repayment of the said subsidy bonds, principal and interest.

And this defendant further alleges that, after the amount remaining due for principal and for interest upon the subsidy bonds so issued by the United States shall

have been ascertained and determined, it is entitled to a provision in the decree to be entered in this cause, that, upon the payment of the said amount, within a period to be fixed by the said decree, by the defendant to the United States, all the securities held by the United States, by virtue of the said *ipso facto* mortgage of the railroad, its rolling stock and appurtenances, and by virtue of the security provided in the rights reserved to resume possession of all of the said lands which shall remain in the ownership of the company, and by virtue of the said sinking fund so constituted by the said Act of May 7th, 1878, and by virtue of the said lien upon all other property of this defendant so created, or attempted to be created, by Section 9 of said Act of May 7th, 1878, shall be fully and completely released and discharged of all manner of lien, claim or right of the United States in respect of the said properties or any part of the same, so that upon such payment this defendant shall hold all of the said railroad, lands and property and assets free and clear of any claim or demand of the plaintiff in this suit.

6. And this defendant further alleges that it is entitled to a further provision to be inserted in the said decree, that in the event of a failure on the part of this defendant to pay the amount so found to be due within the period so determined, then and in that event, all of the said property and rights so held by the United States, that is to say, the railroad, rolling stock and appurtenances covered by the said *ipso facto* mortgage, all of the said lands covered by the grants contained in the said act of July 1, 1862, and July 2, 1864, (subject to all sales and dispositions which may have been made by this defendant), all of the property, securities and money contained in the said sinking fund as the same shall be determined, and all right, title or interest acquired by the United States, if any, under the provisions contained in Section 9 of the Act of May 7th, 1878, shall be directed to be sold at public auction in accordance with the usual rules and practice of this Court in cases of foreclosure and the proceeds of such sum applied to the satisfaction or part satisfaction of the amount found to be due by this defendant to the United States for the principal and interest remaining due and unpaid on the said bonds.

All of which this defendant stands ready upon the

hearing of this cause, and in accordance with the rules o practice and procedure of this Honorable Court, to mai tain and prove, without this: that, if there is any oth matter, cause or thing in said bill of complaint containe material or necessary for this defendant to make answer and not herein well and sufficiently answered, confesse or denied, is true to the knowledge or belief of this d fendant, all of which matters and things this defendant ready and willing to aver, maintain and prove as th Honorable Court shall direct. This defendant prays be hence dismissed in this behalf accordingly.

THE UNION PACIFIC RAILWAY COMPANY,
By

Its Second Vice-President.

Its General Solicitor.

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STATE OF NEW YORK,
City and County of New York, } ss.

OLIVER W. MINK, being duly sworn, says that he the second vice-president of The Union Pacific Railw Company, the above-named defendant; that he has re the foregoing answer and knows the contents there that the same is true of his own knowledge except as the matters therein stated to be alleged on informati and belief, and that as to those matters he believes it be true.

Sworn to and subscribed before me
this 19th day of March, 1897.

## Order of Reference.

In the Circuit Court of the United States for the Eighth Judicial Circuit, District of Nebraska.

The United States of America,
Complainants,
Against
The Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers; F. Gordon Dexter and Oliver Ames, Trustees; The Union Trust Company of New York, Trustee, J. Pierpont Morgan and Edwin F. Atkins, Trustees, and The Central Trust Company of New York, Trustee,
Defendants.

Order of Reference to Special Master.

Now, on motion of the Attorney-General of the United States, and on the consent of all the parties hereto, it is

Ordered that this cause be referred to Hon. William D. Cornish, of St. Paul, Minnesota, as special master, to take and report with all convenient speed evidence and his findings and conclusions upon the following questions and matters:

First: The special master will take evidence and report what are the several priorities of lien in favor of the several parties hereto upon the property covered by the subsidy lien or *ipso facto* mortgage of the complainants, and how much money is due, and the respective dates of maturity thereof, to the several lien-holders in their order of preference, after giving all proper credits and charging all proper debits of the said several parties.

Second. Said Special Master will also take evidence and report a true and accurate description of all the property of the Union Pacific Railway Company subject to any, and, if any, to what, lien of the United States.

Third. Said Special Master will also take evidence and report which of the several parties hereto have liens

and incumbrances prior and superior in lien upon any part, and, if any, upon what part of the said premises and property, to the lien of the United States, and to what extent and amount, and date of maturity.

FOURTH. Said Special Master will also take evidence and report upon the character, nature and value of the sinking fund in the hands of the Secretary of the Treasury of the United States, and the respective rights of the parties therein.

FIFTH. Said Special Master will also take evidence and report upon all such other matters included in or pertinent to the issues herein as may be brought before him by any of the parties hereto; and it is ordered that said Special Master take evidence on all questions and matters arising in this cause, either within or without the Eighth Judicial Circuit, giving at least five days notice of the original time and place designated by him for the taking of such testimony, and said Special Master may adjourn the same from time to time to such times and places as he may appoint, and he is authorized and empowered to take the testimony of witnesses in the cities of New York, Boston, Washington, or elsewhere, as may be most convenient.

SIXTH. As to such testimony said Special Master is authorized and directed, after duly certifying and authenticating the same, to return the same, together with his report thereon, to the Clerk of the Circuit Court of the United States for the District of Nebraska.

WALTER H. SANBORN,
Circuit Judge.

Dated, March 25, 1897.

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The undersigned parties hereto hereby consent to the entry without further notice of the foregoing order.

THE UNITED STATES OF AMERICA,

By GEO. HOADLY,
Its Solicitor in the premises.

THE UNION PACIFIC RAILWAY COMPANY,
By W. R. KELLY,
Its Solicitor.

F. Gordon Dexter and
Oliver Ames,
Trustees,
By Winslow S. Pierce,
R. S. Hall,
Their Solicitor.

The Union Trust Company of New York,
Trustee.
By Wheeler H. Peckham,
Its Counsel.

The Central Trust Company of New York,
Trustee,
By Butler, Notman, Joline & Mynderse,
Its Solicitors.

J. Pierpont Morgan and
Edwin F. Atkins,
Trustees.
By Seward, Guthrie, Morawetz & Steele,
Their Solicitors.

S. H. H. Clark,
Oliver W. Mink,
E. Ellery Anderson,
John W. Doane,
Frederic R. Coudert,
Receivers,
By W. R. Kelly,
Their General Solictor.

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Endorsed on the back as follows:
No. 157, Docket "S"
United States Circuit Court,
District of Nebraska.
United States,
vs.
Union Pacific Ry. Co., et al.
Defendants.
Order of reference in re amount due Complainant, etc.
Filed Mar. 26, 1897,
Oscar B. Hillis, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF

THE UNITED STATES OF AMERICA, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY, ET AL, Defendants.
Government Union Division.

TO THE HONORABLE THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT AND IN THE CAUSE ABOVE ENTITLED:

I respectfully report that, acting under and upon the authority conferred upon me by this Court by its order of reference, dated March 25, 1897, and thereafter filed and entered herein, I have, upon due notice given, taken the evidence offered by the several parties to this cause upon the issues herein, and have certified and authenticated such evidence, and returned the same to this court in this cause.

And I further report that the several questions and issues upon which I am, by the terms of said order of reference, required to report my findings and conclusions have been submitted to me upon the pleadings, the evidence so as aforesaid taken and returned by me, and the arguments and claims of counsel thereon:

Now, having given such questions and issues as so submitted my full and careful consideration, I find and report the facts in respect thereto to be as follows:

INCORPORATION OF UNION PACIFIC RAILROAD COMPANY.

1. That the Union Pacific Railroad Company was duly incorporated and organized under and by virtue of an Act of the Congress of the United States entitled, "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, Military and other purposes," approved July 1, 1862; and

nat, as so organized, said railroad company possessed the owers, and was made subject to the duties, obligations nd restrictions granted and prescribed in said Act.

2. That said Act of Congress was amended by an ct entitled, "An Act to amend an Act entitled, 'An Act o aid in the construction of a railroad and telegraph line om the Missouri River to the Pacific Ocean and secure to he Government the use of the same for postal, military nd other purposes,' approved July 1, 1862," approved uly 2, 1864, and that thereafter other laws were enacted y Congress amendatory of, and supplementary to, said cts of July 1, 1862, and July 2, 1864.

3. That said the Union Pacific Railroad Company ontinued its corporate existence under said original Act nd said amendatory and supplemental Acts, with such owers and subject to such duties, obligations and restric- ions as were by said Acts granted and imposed.

AUTHORITY TO BUILD ROAD.

4. That said the Union Pacific Railroad Company, as o incorporated, was by said Acts of Congress, author- zed to "lay out, locate, construct, furnish, maintain nd enjoy a continuous railroad and telegraph, with the ppurtenances, from a point on the one hundredth meri- ian of longitude west from Greenwich, between the south argin of the valley of the Republican River and the orth margin of the valley of the Platte River, in the Ter- itory of Nebraska, at a point to be fixed by the President f the United States after actual surveys, thence running esterly upon the most direct, central and practicable oute, through the territories of the United States, to the estern boundary of the Territory of Nevada, there to eet and connect with the line of the Central Pacific Rail- oad of California," and also "to construct a single line of ailroad and telegraph from a point on the western bound- ry of the State of Iowa to be fixed by the President of he United States upon the most direct and practicable oute to be subject to his approval, so as to form a connec- ion with the line of said company on the 100th meridian f longitude aforesaid, from the point of commencement n the western boundary of the State of Iowa." And said ailroad company was, by the terms of said Acts, vested ith all the powers, privileges and immunities necessary

to carry into effect the purposes of said Acts as therein set forth.

GRANT OF RIGHT OF WAY.

5. That there was granted to said railroad company under said original Act of Congress, the right of way through the public lands of the United States, to the extent of two hundred (200) feet in width on each side of said railroad where it passed over such public lands, including all necessary grounds for stations, buildings, workshops and depots, machine shops, switches, side-tracks, turntables and water stations, for the construction of said railroad and telegraph line, with the right, power and authority to said company to take from the public lands adjacent to the line of said railroad, earth, stone, timber and other materials for the construction thereof.

6. That by the terms of said Act of July 2, 1864, authority was granted to said railroad company to acquire by purchase or condemnation any lands or premises which might be necessary and proper for the construction and working of said road, not exceeding one hundred feet (100 ft.) on each side of its center line, unless a greater width be required for the purpose of excavation and embankment, and also any lands or premises that might be necessary and proper for turnouts, standing places for cars, depots, station houses, or any other structures required for the construction and operation of said road.

FIXING OF EASTERN TERMINUS.

7. That on the 7th day of March, 1864, Abraham Lincoln, President of the United States, acting in pursuance of the provisions of said Act of Congress approved July 1, 1862, did, upon the application of said railroad company, designate and establish as a point on the western boundary of the State of Iowa from which the Union Pacific Railroad Company should construct a line of railroad and telegraph under the authority of said Act, a point on the western boundary of the State of Iowa, east of and opposite to the east line of Section 10, in Township 15, North of Range 13, east of the Sixth Principal Meridian, in the Territory of Nebraska.

COMMENCEMENT OF CONSTRUCTION.

8. That said the Union Pacific Railroad Company, acting under the authority of said Acts of Congress of July 1, 1862, and July 2, 1864, commenced the construction of its line of railroad and telegraph upon the route designated in said Acts, during the year 1864, and that it completed thereof what was designated as the "first section of forty miles west from the City of Omaha, Nebraska Territory," prior to December 23, 1865.

FIRST REPORT OF COMMISSIONERS.

9. That the President of the United States, on December 23, 1865, pursuant to the provisions of section four of said Act of July 1, 1862, and section six of said Act of July 2, 1864, appointed Lieutenant Colonel J. H. Simpson, Hon. Samuel R. Curtis and Hon. William M. White, as Commissioners to examine and report to him in relation to the portion of said railway and telegraph line so constructed, and that thereafter said Commissioners severally qualified by taking an oath of office.

10. That on the 8th day of January, 1866, said railroad company by Thomas C. Durant, its vice-president, made its report to said Commissioners, of the construction and completion by said railroad company of said railroad and telegraph line as extending from the westerly bank of the Missouri river, near the north line of Section 10, Township 15, Range 13, Nebraska Territory, a distance of forty miles westerly on the located line of said road.

11. That thereafter, and on the 23d day of January, 1866, said Commissioners submitted their report upon said section of forty miles of said railroad and telegraph line, which report was addressed to Hon. James Harlan, Secretary of the Interior of the United States, and, among other things, stated therein that the railroad company "have commenced their road at a point on the west bank of the Missouri river, as near the initial point fixed by the President as is at present practicable, and have constructed it in the line indicated by the accompanying map," and that the work submitted and reported upon "presents forty miles of road supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture and all

other appurtenances of a first-class railroad, suited to the safe and speedy transportation of mails, troops, munitions of war, and public stores thereon."

12. That said report of said Commissioners was, on the 24th day of January, 1866, submitted to the President of the United States by Hon. James Harlan, Secretary of the Interior, with the recommendation that the same be accepted and proper steps be ordered for the issue of the bonds and land grants due the company, agreeably to law, and that on the same day the President of the United States entered the following endorsements upon said report of the Secretary of the Interior: "Executive Mansion, January 24, 1866. The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect."

(Signed) "ANDREW JOHNSON."

POINT OF COMMENCEMENT OF CONSTRUCTION.

13. That the eastern terminus of the section of said railroad so reported upon by said commissioners was, in fact, a point on the west bank of the Missouri river and within and near the northeast corner of said Section 10, Township 15, Range 13, in Nebraska.

14. That thereafter the construction of said railroad and telegraph line was continued along the designated route westerly through the territories of Nebraska, Colorado and Wyoming, and into the territory of Utah.

FURTHER REPORTS OF COMMISSIONERS.

15. That the successive sections of said railroad and telegraph line as the same were constructed and completed to the one-thousandth mile-post west from Omaha, were in like manner from time to time reported upon by said railroad company to Commissioners appointed by the President of the United States, and qualified as such under said provisions of said Acts of Congress, and were by said Commissioners reported upon and approved by the Secretary of the Interior, who endorsed upon the several reports of said Commissioners like recommendations as to the issuance of bonds and land grants to the company, and submitted the same to the President of the United States; and that the President of the United States endorsed upon

such recommendations his approval thereof and his direction for the issuance of bonds and land grants on account thereof, under the terms of said Acts.

FINAL REPORT OF COMMISSIONERS.

16. That on the 13th day of March, 1869, the President of the United States, pursuant to the provisions of the sixth section of the Act entitled "An Act to Amend an Act entitled, 'an Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes,'" approved July 2, 1864, appointed James F. Wilson, General G. K. Warren and I. N. Morris as Commissioners to examine and report to the President of the United States upon the road and telegraph line of the Union Pacific Railroad Company, as contemplated and specified by said Acts of Congress, and that said Commissioners, having qualified by severally taking their oaths of office, made their examination and reported to Hon. J. D. Cox, Secretary of the Interior, that they had examined and found completed, and recommended the acceptance of, the thirty-ninth section of twenty miles of said railroad, the fortieth section of twenty miles of said railroad, the forty-first section of twenty miles of said railroad, the forty-second section of twenty miles of said railroad, and the forty-third section of 5.88 miles of said railroad, whereupon the Secretary of the Interior reported to the President of the United States, on July 15, 1869, transmitting the five reports of said Commissioners, Gen. G. K. Warren and James F. Wilson, above referred to, recommending the acceptance of the same and the issue of bonds and of patents of lands due on account of said section of 85.88 miles of railroad and telegraph lines commencing on the road of said Railroad Company at the 1000th mile-post west from Omaha and terminating at the 1085.88 mile-post, agreeably to the provisions of the act of July 1, 1862, and the acts amendatory thereof, and recommending that said bonds and patents be issued to said Railroad Company on account of the work from said 1000th mile-post to the "common terminus of the Union Pacific and the Central Pacific railroads" "at or near Ogden," and that the bonds and patents on account of said work from said common terminus to Prom-

ontory Summit be issued to such Company as the proper authority, after full investigation of the respective claims of the Union Pacific Railroad Company and the Central Pacific Railroad Company, of California, should thereafter determine to be lawfully entitled, subject to the provision that no bonds or patents should in any event be issued until such security should be deposited with the Secretary of the Treasury of the United States, necessary to secure the ultimate completion of the road, as should be agreeable to the several acts of Congress.

17. That on the same day the President of the United States endorsed upon said report of said Secretary of the Interior the following: "Executive Mansion, July 15, 1869. The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect." (Signed) "U. S. Grant."

JUNCTION WITH CENTRAL PACIFIC.

18. That said railroad and telegraph line was constructed under the authority of said acts of Congress, by said Railroad Company, to a common terminus with the Central Pacific Railroad, and that the Congress of the United States, by an act entitled, "An Act to Fix the Point of Junction of the Union Pacific Railroad Company and the Central Pacific Railroad Company," approved May 6, 1870, provided that the common terminus and point of junction of the Union Pacific Railroad and the Central Pacific Railroad should be definitely fixed and established on the line of railroad as now located and constructed, northwest of the station at Ogden, and within the limits of the sections of land hereinafter mentioned, viz: Section thirty-six of Township seven, of Range two, situate north and west of the principal meridian and base line in the Territory of Utah, and sections twenty-five, twenty-six and thirty-five of Township seven, of Range two, and section six of Township six, and sections thirty and thirty-one of Township seven, of Range one, and sections one and two of Township six, of Range two, all situate north and west of said principal meridian and base line.

19. That the common point of terminus between the Union Pacific Railroad Company's line of railroad and the line of the Central Pacific Railroad Company, became and

was fixed at a point about five miles northwest of Ogden, in the Territory (now State) of Utah, and distant from the point at which the construction of the line of said railroad was commenced in section 10, Township 15, Range 13, in Nebraska, 1,038.48 miles along the present line of said railroad.

20. That said railroad and telegraph line was constructed and completed according to the requirements of said several acts of Congress, from said point of commencement thereof to said point of common terminus with the Central Pacific Railroad, in the year 1869.

POINT OF COMMENCEMENT.

21. That at the time when the construction of said railroad was commenced, the boundary line between the State of Iowa and the Territory of Nebraska was the channel of the Missouri River, and that the point where the construction of the said railroad line was commenced was at or near the westerly bank of said river, and that in order to reach therefrom a point on the westerly boundary of the State of Iowa, it would have been necessary to have constructed a railroad bridge across the Missouri River; and that said railroad company did not at any time construct its railroad from the point where the same was so as aforesaid commenced in said section 10, township 15, range 13, to the point designated by the President of the United States on March 7, 1864, as a point on the western boundary of the State of Iowa east of and opposite to the east line of Section 10, Township 15, Range 13, east of the sixth principal meridian, in the Territory of Nebraska.

22. That from the point where the construction of said railroad was as aforesaid originally commenced the line of railroad as then constructed followed the westerly bank of the Missouri River southerly for a distance of about three miles, running thence westerly and away from the bank of said river.

COUNCIL BLUFFS TERMINALS—CROSSING OF RIVER.

23. That on the 7th day of March, 1864, and continuously thereafter the western boundary of the State of Iowa east of and opposite to the east line of said Section 10 in the Territory of Nebraska, above referred to, was

embraced within and was a part of the City of Council Bluffs in said State of Iowa.

24. That said railroad company acquired lands for its terminals and bridge approaches in Council Bluffs in about the year 1866, which terminal grounds are the same as those upon which the present terminal station of said railroad is situated, and that thereafter and during the period of the construction of said railroad, and until a permanent bridge was constructed across the Missouri River as hereinafter stated, said railroad company received and delivered freight and passengers to and from its line of railroad at its station in Council Bluffs in the State of Iowa, by means of railway tracks from said station to the easterly bank of the Missouri River, and thence across said Missouri River to connections with its track constructed as aforesaid on the westerly bank of said river, at various points from the point of the commencement of construction hereinbefore referred to, to a point about two and one-half miles southerly from said point, and that the transfer across the Missouri River was effected by means of ferryboats during the season when such boats could be operated and used, and by means of tracks resting upon temporary piling during the winter season of each year.

25. That said tracks and said means of transfer across the Missouri River were temporary in character, and were frequently changed to meet the varying requirements resulting from so crossing said river upon or near its surface.

CONSTRUCTION OF BRIDGE.

26. That prior to and during the period of the construction of said railroad, various surveys were made by said Railroad Company for the purpose of ascertaining, and determining upon, a suitable location for a permanent railroad bridge across the Missouri river, and that said Railroad Company finally determined to build a permanent railroad bridge across said river between Omaha and Council Bluffs at the place where the present bridge is located, and commenced work thereon or in preparation therefor in the latter part of the year 1868, and during the year 1869.

That after the year 1869 nothing was done upon the work of constructing said bridge, until the year 1871.

27. That meanwhile there was enacted by the Congress of the United States an act entitled "An Act to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri river at Omaha, Nebraska, and Council Bluffs, Iowa," which act was approved February 24, 1871, and provided among other things "that for the more perfect connection of any railroads that are or shall be constructed to the Missouri river at or near Council Bluffs, Iowa, and Omaha, Nebraska, The Union Pacific Railroad Company be and it is hereby authorized to issue such bonds, and to secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge over said river, and the tracks and depots required to perfect the same as now authorized by law of Congress," and further "that nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific Railroad from the place where it is now fixed under existing laws, nor to release said Railroad Company, or its successors, from its obligations as established by existing laws," and that the amount of bonds authorized by said act to be issued for the purposes as therein stated, was fixed at not to exceed two and one-half millions of dollars.

28. That thereupon said Railroad Company made and issued its mortgage and bonds under the authority of said act, as is hereinafter more specifically found, and with the moneys derived from the sale of said bonds built and completed a permanent railroad bridge across the Missouri river between Omaha, Nebraska, and Council Bluffs, Iowa, with the approaches and appurtenances thereto, during the years 1871 and 1872, and that the same was completed in the year 1872.

29. That such bridge and approaches consisted of grades and railroad tracks extending from the east line of the Railroad Company's property between Twelfth and Thirteenth avenues in Council Bluffs, Iowa, in a westerly direction to the east bank of the Missouri river to a connection with the bridge; of a permanent railroad bridge across said river to the westerly bank thereof; and of grades and railroad tracks connecting therefrom westerly through Omaha to a connection with the tracks of said Railroad Company originally constructed by it at a point

at about Twentieth street in said city of Omaha, a distance of three and ninety-eight hundredths (3.98) miles. That the same was not certified to the United States under the provisions of the said Acts of July 1, 1862, and July 2, 1864, and that no subsidy bonds or patents of lands were delivered by the United States to said railroad company at the time of or after the construction thereof or based specifically thereon.

30. That thereafter said bridge and its approaches were used and operated by said Railroad Company as a part of the main line of said railroad property, and are included in what has since been known and described as the Bridge Division of said property.

31. That said Railroad Company maintained and operated its said railway properties from the times of the construction and completion of the several parts of the same, until said Company became by consolidation a part of The Union Pacific Railway Company in 1880.

FORMATION OF UNION PACIFIC RAILWAY COMPANY.

32. That defendant The Union Pacific Railway Company is a corporation created by and existing under and by virtue of said acts of the Congress of the United States of July 1, 1862, and of July 2, 1864, and the acts of the Congress of the United States amendatory thereof and supplemental thereto.

33. That said The Union Pacific Railway Company was so formed and created by the consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, on or about January 24, 1880, and that said The Union Pacific Railway Company, so created by the consolidation of said several railway companies, thereupon became the successor to each and all of said constituent companies, and thereby and by conveyances from said constituent companies became vested with all the rights, titles, interests, properties and franchises of each and all of said constituent companies, and that said The Union Pacific Railway Company then and there became the owner of the railroad property and franchises of The Union Pacific Railroad Company, including the property and franchise embraced in and covered by the mortgage of The Union Pacific Railroad Company dated November 1,

1865, hereafter described, as well as the lines of railway and property which it derived through said consolidation from said several other constituent companies.

34. That the lines of railway which became through said consolidation the property of said The Union Pacific Railway Company as aforesaid, are in general terms described and are commonly known and will be hereinafter designated as follows: A line from Council Bluffs, Iowa, to Bridge Junction, in the city of Omaha, including the bridge across the Missouri river, known and designated as the Omaha Bridge Division; a line of railway from Omaha, Nebraska, to a point five miles west of Ogden, Utah, known and designated as the Union Division; a line of railway from Kansas City, Missouri, and Wyandotte, Kansas, to Denver, Colorado, known and designated as the Kansas Division; a line of railway from Leavenworth, Kansas, to Lawrence Junction, Kansas, known and designated as the Leavenworth branch of the Kansas Division; a line of railway from Denver, Colorado, to Cheyenne, Wyoming, known and designated as the Denver Pacific Division.

35. That thereafter said Union Pacific Railway Company maintained and operated its railroad properties, including the several portions thereof which had been the property of The Union Pacific Railroad Company prior to such consolidation, with such additions and extensions as were from time to time made thereto, until said property of said The Union Pacific Railway Company passed into the possession of Receivers thereof as hereinafter stated.

AMES RECEIVERSHIP.

36. That heretofore and on the 9th day of October, 1893, Oliver Ames, Second, and Samuel Carr, as executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edwin F. Atkins, commenced a suit against The Union Pacific Railway Company and others (hereinafter called the Ames Suit), in the Circuit Court of the United States for the Eighth Judicial Circuit and District of Nebraska, and filed their bill of complaint therein, which bill of complaint is recited in the bill of complaint in this cause, and that such proceedings were had in said suit that on the 13th day of October, 1893, S. H. H. Clark, Oliver W. Mink, and E.

Ellery Anderson were, by said Court, appointed Receivers of all the properties of said Railway Company, and that on the 13th day of November, 1893, upon the petition of the Attorney-General of the United States intervening in said suit, John W. Doane and Frederic R. Coudert were appointed as additional Receivers of said property in said cause.

37. That like suits were commenced, like bills of complaint filed and like proceedings had, including the appointment of said persons as Receivers of the property of said Company, on the 13th day of October, 1893, in the several Circuit Courts of the United States for the Southern District of New York, the District of Kansas, and the District of Colorado, and on the 15th day of October, 1893, for the District of Massachusetts, and on the 16th day of October, 1893, for the Western District of Missouri, for the Southern District of Iowa, for the District of Wyoming, for the District of Washington, and on the 17th day of October, 1893, for the District of Montana and for the District of Oregon, and on the 18th day of October, 1893, for the District of Idaho, and on the 3d day of November, 1893, in the District Court of the Third Judicial District of Utah Territory, and the said additional Receivers were likewise thereafter appointed in said several suits.

38. That thereupon and thereafter said Receivers appointed in said Ames suits took possession of and operated, controlled and managed the property of said The Union Pacific Railway Company, and so operated the portion thereof which had been derived by said Company from said The Union Pacific Railroad Company through said consolidation, under the direction of the Court from time to time given in respect thereto, until about the 21st day of January, 1895.

EARNINGS OF BRIDGE DIVISION.

39. That during the period of said operation of said property by said Receivers in said cause, and on the 1st day of August, 1894, said Receivers were directed by an order of Court, entered in said cause, to fix the tolls upon business transported over said Bridge Division of said Railway property at the rate directed by the Trustees of the Omaha Bridge Mortgage hereinafter described, and

from time to time as required alter the same in conformity with the instructions which might be given by said Trustees, and to keep separate accounts of all revenues derived from such tolls to be levied upon the property and passengers transported over or which should use or have the benefits of said Omaha Bridge Division, as directed by said mortgage, and, after having paid therefrom the amounts required for the service of said property and for its proper operation and maintenance, to set apart the said tolls and the amount received in each calendar month, and that said tolls, or so much thereof as should remain after complying with the requirements above stated, should within fourteen days after the end of each calendar month, or as soon thereafter as the same could by proper accounting be ascertained, be paid to Drexel, Morgan & Company to the credit of the Trustees of said mortgage, to be kept and applied in paying interest upon bonds secured by said mortgage, creating a sinking fund, and purchasing or redeeming such bonds, as provided by the terms of said mortgage.

40. That thereupon and thereafter said Receivers, as Receivers in said Ames cause, or as Receivers in the cause in which Dexter and Ames are complainants, as hereinafter stated, have continuously operated said Omaha Bridge Division of said property and kept their accounts of such operation and deposited and disposed of the revenue derived therefrom, all as required by said order of Court.

### Dexter Receivership.

41. That on the 21st day of January, 1895, an order was entered in the cause in which F. Gordon Dexter and Oliver Ames, Second, are complainants(hereinafter called the Dexter cause) in the District of Nebraska and thereafter in the several districts in which said cause is pending, appointing the same persons who were Receivers of said property in said Ames cause Receivers in said Dexter cause of the property of said Railway Company affected thereby, since which time said Receivers in said Dexter cause have continuously operated and are now operating said property in conjunction with the several other portions of railway and railway properties of said The Union Pacific Railway Company, of which other portions of

such property they are Receivers in other causes pending in this or other Courts against said The Union Pacific Railway Company.

FIRST MORTGAGE BONDS.

42. That said The Union Pacific Railroad Company, pursuant to, and under the authority of, and in compliance with, the powers conferred upon it by said several acts of Congress, and pursuant to due corporate action taken in that behalf by said Railroad Company, and for the purpose of providing means to construct and complete its said railroad and telegraph line, did duly make, execute and issue, under its corporate seal, and did deliver to various persons, firms and corporations, for value, and for considerations and purposes and in the manner provided by its first mortgage hereinafter mentioned, its first mortgage bonds, to the number of 27,229 in the aggregate amount of twenty-seven million two hundred twenty-nine thousand (27,229,000) dollars, all of which bonds were, as so issued and delivered, duly certified by the trustees named in said mortgage, as therein provided, and that all of said bonds in said number and amount as above stated, are now outstanding and unpaid. That said bonds are in the form and contain the provisions as stated in the bill of complaint in said Dexter cause.

43. That in each of said bonds the Union Pacific Railroad Company promised to pay the sum of one thousand (1000) dollars to the holder thereof at its office in the City of New York, thirty years after the date thereof, and also interest thereon at the rate of six per cent. per annum, payable semi-annually from the date thereof in lawful money of the United States, until the principal sum should be paid, on presentation of the interest coupons annexed thereto, at the office of said Company in the City of New York.

44. That said bonds were issued in the installments and bearing the dates and maturing at the dates, respectively, as follows:

> Said bonds, to the amount of $6,475,000, were issued, bearing date the first day of January, 1866, and maturing, by the terms thereof, on the first day of January, 1896.

Said bonds, to the amount of $1,598,000, were issued, bearing date the first day of January, 1867, and maturing, by the terms thereof, on the first day of January, 1897.

Said bonds, to the amount of $1,920,000, were issued, bearing date the first day of July, 1867, and maturing, by the terms thereof, on the first day of July, 1897.

Said bonds, to the amount of $5,999,000, were issued, bearing date the first day of January, 1868, and maturing, by the terms thereof, on the first day of January, 1898.

Said bonds, to the amount of $8,837,000, were issued, bearing date the first day of July, 1868, and maturing, by the terms thereof, on the first day of July 1898.

Said bonds, to the amount of $2,400,000, were issued, bearing date the first day of January, 1869, and maturing, by the terms thereof, on the first day of January, 1899.

FIRST MORTGAGE.

45. That pursuant to, and under authority of, and in accordance with the powers conferred upon said railroad company by said acts of Congress, and pursuant to due corporate action taken in that behalf by said company, and for the purpose of securing the payment of the bonds aforesaid, issued and to be issued, with the interest due and to grow due thereon, and for other lawful considerations, said Union Pacific Railroad Company did duly make and execute, under its corporate seal, and did deliver to Edwin D. Morgan, of the City of New York, and Oakes Ames, of Easton, Massachusetts, as trustees, a mortgage or deed of trust dated the first day of November, 1865, (hereinafter called Union Pacific First Mortgage), in the form and containing the provisions as set forth in the bill of complaint herein, wherein and whereby said The Union Pacific Railroad Company did bargain, sell, assign, transfer and set over, enfeoff, convey and confirm, unto the said Edwin D. Morgan and Oakes Ames, as trustees, and in trust for the purposes aforesaid, and to the survivor of them, and to their successor or successors, all and singular the railroad, telegraph property and franchises in said mortgage described as follows:

46. "All and singular the railroad and telegraph of the said party of the first part [the said Union Pacific Railroad Company], heretofore constructed, or hereafter to be constructed, from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms and provisions of said acts of Congress, to-wit, at the City of Omaha, in the territory of Nebraska; thence, as provided in said acts of congress, through the territories of the United States to the western boundary of the late territory of Nevada, together with all its lands, tenements, hereditaments, rights of way and easements, acquired or appropriated, or which shall be hereafter acquired or appropriated, for the purpose of a right of way for a single, double or other track, railroad and telegraph lines, and for depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, superstructures, erections and fixtures, being necessary for the use of said railroad or telegraph; and also all and singular the franchises now owned, possessed or acquired, or which shall be hereafter owned, possessed or acquired, by the said party of the first part, for the purpose of building and operating said railroad and telegraph above specified and described; and also all the rails, depots, yards, engine-houses, car-houses, station-houses, warehouses, machine-shops, workshops and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired, by said party of the first part, necessary to said railroad and telegraph line, or the running and operating the same."

GOLD CLAUSE.

47. That subsequently and on or about the 12th day of March, 1868, the said The Union Pacific Railroad Company as thereto authorized by law and in pursuance of due corporate action, made and entered into an agreement or indenture supplemental to said mortgage of November 1st, 1865, with said Edwin D. Morgan and Oakes Ames, Trustees, dated the said 12th day of March, 1868, wherein and whereby the said The Union Pacific Railroad Company, for the consideration therein expressed, agreed with the said Edwin D. Morgan and Oakes Ames, Trustees, for the benefit of all who then were or should thereafter be holders of said First Mortgage Bonds, and to and with the successors of

said Trustees in the trust created by said indenture of mortgage of November 1st, 1865, that the principal of all of said First Mortgage Bonds, being one thousand dollars each, as well such as had then been issued as such as should thereafter be issued, should and would be paid by the said Railroad Company, whensoever they should respectively become payable according to the tenor thereof, in gold coin of the United States at par; that is to say, one thousand dollars of such coin for each of said bonds, and thereafter The Union Pacific Railroad Company or its successor company, The Union Pacific Railway Company, cause to be stamped upon such of said First Mortgage Bonds, issued and secured by the said mortgage of November 1st, 1865, as were presented for that purpose, a provision to the effect that the same should be payable in United States Gold Coin.

TRUSTEES.

48. That said Edwin D. Morgan and Oakes Ames duly accepted said mortgage of November 1st, 1865, and the trusts thereunder, and continued to be and act as the trustees thereof until their deaths, respectively. That on May 8, 1873, the said Oakes Ames died, and on December 3d, 1873, Oliver Ames was duly appointed trustee in the place and stead of the said Oakes Ames; and the said Oliver Ames afterwards, to-wit, on March 9th, 1877, died, and on June 1st, 1881, Frederick L. Ames was duly appointed trustee in the place and stead of the said Oliver Ames. That on February 14, 1883, Edwin D. Morgan died, and on March 6th, 1883, said F. Gordon Dexter was duly appointed successor trustee in the place and stead of said Edwin D. Morgan. That on September 13th, 1893, Frederick L. Ames died, and on October 12th, 1893, said Oliver Ames 2d was duly appointed trustee under said mortgage in the place and stead of Frederick L. Ames. That each of the said trustees, original and successor, duly accepted the said mortgage and the trusts thereunder, and said F. Gordon Dexter and Oliver Ames, 2d, now are the trustees under said mortgage, and the said agreement of March 12th, 1868, supplemental thereto.

RECORDING OF FIRST MORTGAGE.

49. That said first mortgage of the Union Pacific Railroad Company of November 1, 1865, was duly recorded in all the several recording offices or places of registration where the same was required by law to be recorded, prior to 1870, except that said mortgage was not recorded within the County of Pottawattamie in the State of Iowa.

INTEREST PAYMENTS AND DEFAULTS.

50. That default was made in the payment of the interest due upon all of said first mortgage bonds on the first day of July, 1894, the aggregate amount of such default being the sum of eight hundred and sixteen thousand eight hundred and seventy dollars ($816,870). That no part of said interest was paid until November 27, 1894, and that no interest has been paid upon such defaulted interest for the period of such default.

That the interest due upon said bonds January 1, 1895, was not paid until January 20, 1896. That the interest due upon said bonds July 1, 1895, was not paid until May 8, 1896. That the interest due upon said bonds January 1, 1896, was not paid until September 25, 1896. That the interest due upon said bonds July 1, 1896, was not paid until November 19, 1896. That the interest due upon said bonds January 1, 1897, was not paid until March 2, 1897. That the interest upon said bonds which matured January 1, 1894, and July 1, 1894, was paid by the Receivers in said Ames cause under authority of orders of Court made in said cause. That the interest due January 1, 1895, July 1, 1895, January 1, 1896, July 1, 1896, and January 1, 1897, was paid by the Receivers in said Dexter cause, under authority of orders of Court made therein.

That at the several times when said interest payments were made as aforesaid by said Receivers in said several causes, said Receivers duly advertised the time when such payment would be by them made, being the several dates at which payments were made by them as hereinbefore recited.

That in and by said orders of court providing for the payment of said interest by said Receivers in said causes, they were directed by the Court to pay interest upon the

matured interest so paid by them after the maturity thereof for the period from the date of such maturity until such payment was made by them, at the rate of six per cent. per annum, except that as to the payment of interest which matured on July 1, 1894, no such provision for interest upon such defaulted interest was made.

COUPONS NOT PRESENTED FOR PAYMENT.

51. That certain of the interest and interest coupons upon such bonds remain unpaid, payment thereof not having been demanded, and such coupons having never been presented for payment, which unpaid coupons and interest are of the dates of maturity and in numbers and amounts as follows:

| Due Date | Number of Coupons. | Amount |
|---|---|---|
| From July 1, 1869 to July 1, 1887:— | | |
| July 1, 1869 | 20 | $600 |
| January 1, 1870 | 20 | 600 |
| July 1, 1870 | 20 | 600 |
| January 1, 1871 | 20 | 600 |
| July 1, 1871 | 20 | 600 |
| January 1, 1872 | 20 | 600 |
| July 1, 1872 | 20 | 600 |
| January 1, 1873 | 20 | 600 |
| July 1, 1873 | 20 | 600 |
| January 1, 1874 | 20 | 600 |
| July 1, 1874 | 20 | 600 |
| January 1, 1875 | 20 | 600 |
| July 1, 1875 | 20 | 600 |
| January 1, 1876 | 20 | 600 |
| July 1, 1876 | 20 | 600 |
| January 1, 1877 | 20 | 600 |
| July 1, 1877 | 20 | 600 |
| January 1, 1878 | 20 | 600 |
| July 1, 1878 | 29 | 870 |
| January 1, 1879 | 23 | 690 |
| July 1, 1879 | 26 | 780 |
| January 1, 1880 | 23 | 690 |
| July 1, 1880 | 22 | 660 |
| January 1, 1881 | 20 | 600 |
| July 1, 1881 | 20 | 600 |

| Due Date | Number of Coupons. | Amount | |
|---|---|---|---|
| January 1, 1882 | 20 | 600 | |
| July 1, 1882 | 23 | 690 | |
| January 1, 1883 | 26 | 780 | |
| July 1, 1883 | 23 | 690 | |
| January 1, 1884 | 21 | 630 | |
| July 1, 1884 | 23 | 690 | |
| January 1, 1885 | 21 | 630 | |
| July 1, 1885 | 28 | 840 | |
| January 1, 1886 | 22 | 660 | |
| July 1, 1886 | 21 | 630 | |
| January 1, 1887 | 21 | 630 | |
| July 1, 1887 | 24 | 720 | |
| | | | $23,880 |
| From January 1, 1888 to July 1, 1893:— | | | |
| January 1, 1888 | 21 | $630 | |
| July 1, 1888 | 23 | 690 | |
| January 1, 1889 | 23 | 690 | |
| July 1, 1889 | 23 | 690 | |
| January 1, 1890 | 21 | 630 | |
| July 1, 1890 | 21 | 630 | |
| January 1, 1891 | 22 | 660 | |
| July 1, 1891 | 22 | 660 | |
| January 1, 1892 | 21 | 630 | |
| July 1, 1892 | 27 | 810 | |
| January 1, 1893 | 32 | 960 | |
| July 1, 1893 | 35 | 1050 | |
| | | | $8,730 |
| January 1, 1894 | 51 | $1530 | |
| July 1, 1894 | 119 | 3870 | |
| January 1, 1895 | 186 | 5580 | |
| July 1, 1895 | 268 | 8040 | |
| January 1, 1896 | 314 | 9420 | |
| July 1, 1896, Coupons and interest on bonds | | 12930 | |
| January 1, 1897, Coupons and interest on bonds | | 28950 | |
| | | | $70,330 |
| Total | | | $102,930 |

52. That heretofore there was set apart by the Union Pacific Railway Company, in the hands of James G. Harris, treasurer of that company, as trustee, which action was ratified and confirmed by an order of court entered in the said Ames cause, dated December 4, 1893, Vol. 1, page 314, a fund of money belonging to said railway company, for the purpose of paying the interest coupons upon said bonds which remained outstanding and unpaid, maturing from January 1, 1888, to July 1, 1893, inclusive, of which sum there remains unused the sum of $8,670, and that the coupons maturing during said period, the payment of which is so provided for and which so still remain unpaid amount to the sum of $8,730.

BONDS ISSUED AND OUTSTANDING.

53. That, complying with the requirements of the first subdivision of the order of reference in said Dexter cause, I find that there are issued, outstanding and secured by said mortgage of said railroad company of November 1, 1865, twenty-seven thousand two hundred twenty-nine (27,229) bonds, each in principal amount of one thousand dollars ($1,000) and amounting in the aggregate to the principal sum of twenty-seven million two hundred twenty-nine thousand dollars ($27,229,000).

That of said bonds six thousand four hundred seventy-five (6,475), in the principal amount of six million four hundred seventy-five thousand dollars ($6,475,000,) became due and payable on the first day of January, 1896, and payment thereof was duly demanded.

That of said bonds one thousand five hundred ninety-eight (1,598) in the principal amount of one million five hundred ninety-eight thousand dollars (1,598,000,) became due and payable on the first day of January, 1897, and payment thereof was duly demanded.

That of said bonds one thousand nine hundred twenty (1,920,) in the principal amount of one million nine hundred twenty thousand dollars ($1,920,000,) will become due and payable on the first day of July, 1897.

That of said bonds five thousand nine hundred ninety-nine ($5,999), in the principal amount of five million nine hundred ninety-nine thousand (5,999,000) dollars, will become due and payable on the 1st day of January, 1898.

That of said bonds eight thousand eight hundred thirty-seven (8,837), in the principal amount of eight million eight hundred thirty-seven thousand (8,837,000) dollars, will become due and payable on the 1st day of July, 1898.

That of said bonds two thousand four hundred (2,400), in the principal amount of two million four hundred thousand (2,400,000) dollars, will become due and payable on the 1st day of January, 1899.

PRINCIPAL AND INTEREST PAST DUE.

54. That, computing interest upon the principal amount of said overdue bonds, from January 1, 1897, to which date the interest thereon was heretofore ordered paid by the Court herein, as aforesaid, to May 1, 1897, and computing interest upon the several amounts of interest which matured on July 1, 1894, and semi-annually thereafter, and which remain unpaid, from the several dates when such interest matured to the date when payment was made upon such interest installment, there is found to be due, of the principal and interest of said first mortgage indebtedness, on the 1st day of May, 1897.

| | | |
|---|---|---|
| Principal of bonds due January 1, 1896 | | $6,475,000.00 |
| Interest on said principal sum, from January 1, 1897, to May 1, 1897, at six per cent. per annum | 129,500 00 | |
| Principal of bonds due January 1, 1897 | 1,598,000 00 | |
| Interest on said principal sum, from January 1, 1897, to May 1, 1897, at six per cent. per annum | 31,960 00 | |
| Coupons outstanding and unpaid, which matured at dates from July 1, 1869, to July 1, 1887 | 23,880 00 | |
| Coupons outstanding and unpaid, which matured at dates from January 1, 1888, to July 1, 1893, inclusive | $8,730 00 | |
| Coupons outstanding and unpaid, which matured at dates from January 1, 1894, to January 1, 1897, inclusive | 70,320 00 | |
| Interest on $816,870 of interest due July 1, 1894, from said date to November 27, 1894 | 19,877 17 | |

| | |
|---|---|
| Interest on $5,580 of interest due January 1, 1895, from said date to January 20, 1896.. | 353 40 |
| Interest on $8,040 of interest due July 1, 1895, from said date to May 8, 1896..... | 412 72 |
| Interest on $9,420 of interest due January 1, 1896, from said date to September 25, 1896 | 414 48 |
| Interest on $12,930 of interest due July 1, 1896, from said date to November 19, 1896 | 297 39 |
| Interest on $28,950 of interest due January 1, 1897, from said date to March 2, 1897.. | 289 50 |
| Total amount due and payable on May 1, 1897..... | $8,359,034 66 |

Of which amount there is, as above noted, deposited by said The Union Pacific Railway Company, under authority of the Court, for the payment of coupons maturing from January 1, 1888, to July 1, 1893, the sum of $8,670.

PRINCIPAL AND INTEREST NOT YET DUE.

55. That in addition to said amount of principal and interest found to have been due and payable on the 1st day of May, 1897, of said first mortgage bonds, there was on said date owing, of principal and interest, upon the bonds secured by said first mortgage, which have not become due and payable, the following amounts:

| | |
|---|---|
| Principal of bonds which fall due July 1, 1897. | $1,920,000 |
| Principal of bonds which fall due on January 1, 1898..... | 5,999,000 |
| Principal of bonds which fall due July 1, 1898 | 8,837,000 |
| Principal of bonds which fall due January 1, 1899..... | 2,400,000 |
| Interest upon said principal amount of said bonds, from January 1, 1897, to May 1, 1897 | 383,120 |
| | $19,539,120 |

That there is hereby found to have been owing upon the said bonds and mortgage on the first day of May, 1897:

| | |
|---|---|
| Of principal and interest then due and payable..... | $8,359,034 66 |
| Of principal and interest owing, but not then due..... | 19,539,120 00 |
| A total sum of..... ..... .... | $27,898,154 66 |

SUBSIDY BONDS.

56. That under the authority of said several Acts of Congress, and pursuant to the terms thereof, there were issued and delivered by the Secretary of the Treasury of the United States to said The Union Pacific Railroad Company for the purposes stated in said Acts, the bonds of the United States (hereafter termed the subsidy bonds) in the total principal amount of twenty-seven million, two hundred thirty-six thousand, five hundred twelve dollars ($27,236,512), which bonds were each of the principal amount of one thousand dollars ($1,000), except one of said bonds, which was of the amount of five hundred twelve dollars ($512), and were payable thirty years after their respective dates with interest at six per cent. per annum, payable semi-annually in lawful money and legal tender of the United States, and that all of said bonds so issued and delivered were of the tenor and effect prescribed in said Acts of Congress of the United States, and were so issued and delivered by the Secretary of the Treasury of the United States to said Railroad Company as, in the manner, and upon the conditions, and at about the times prescribed in said Acts.

57. That by the terms of said Acts under which said bonds were so issued and delivered, it was provided that to secure repayment to the United States, as provided in said Acts, of the amount of said bonds so issued and delivered to said railroad company, together with all interest thereon which might be paid by the United States, the issue of said bonds, and the delivery thereof to said railroad company, should *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds were so issued.

58. That by the terms of said Act of Congress of July 2, 1864, it was provided that the lien upon said railroad and railroad property which should arise on account of the issuance and delivery of said subsidy bonds by the United States to said railroad company should be subordinate to the lien of the first mortgage bonds authorized to be issued upon the railroad and telegraph lines of said The Union Pacific Railroad Company, to the extent and subject to the exceptions as specified in said Act.

59. That said subsidy bonds of the United States so issued and delivered by the Secretary of the Treasury of the United States to said The Union Pacific Railroad Company, in pursuance of said Act of Congress as aforesaid, were issued upon the dates, in the respective amounts, matured at the respective dates, and bore interest from the respective dates, all as appears in the following tabulated statement thereof, to-wit:

| Maturity of Bonds | Date of Issue | To whom delivered | Commencement of Interest | Amount | Total |
|---|---|---|---|---|---|
| February 1, 1896 ..... | Feb. 1, 1866 | ..... | Feb. 1, 1866 | 640,000 | |
| | May 7, 1866 | ..... | May 7, 1866 | 400,000 | |
| | June 26, 1866 | ..... | June 26, 1866 | 640,000 | |
| | July 13, 1866 | ..... | July 13, 1866 | 320,000 | |
| | Aug. 9, 1866 | ..... | Aug. 9, 1866 | 560,000 | |
| | Sep. 11, 1866 | ..... | Sep. 11, 1866 | 720,000 | |
| | Oct. 15, 1866 | ..... | Oct. 13, 1866 | 560,000 | |
| | Nov. 8, 1866 | ..... | Nov. 7, 1866 | 480,000 | |
| January 1, 1897 ..... | Jan. 9, 1867 | ..... | Jan. 8, 1867 | 560,000 | |
| | June 11, 1867 | ..... | June 10, 1867 | 640,000 | |
| | July 6, 1867 | ..... | July 6, 1867 | 640,000 | |
| | Aug. 29, 1867 | ..... | Aug. 29, 1867 | 560,000 | |
| | Oct. 2, 1867 | ..... | Oct. 2, 1867 | 560,000 | |
| | Nov. 5, 1867 | ..... | Nov. 5, 1867 | 560,000 | |
| | Dec. 13, 1867 | ..... | Dec. 13, 1867 | 320,000 | |
| January 1, 1898 ..... | Jan. 28, 1868 | ..... | Jan. 27, 1868 | 957,000 | |
| | May 18, 1868 | ..... | May 16, 1868 | 960,000 | |
| | May 19, 1868 | ..... | May 18, 1868 | 960,000 | |
| | June 12, 1868 | ..... | June 12, 1868 | 960,000 | |
| | June 17, 1868 | ..... | June 18, 1868 | 960,000 | |
| | July 23, 1868 | ..... | July 22, 1868 | 960,000 | |
| | July 25, 1868 | ..... | July 24, 1868 | 1,841,000 | |
| | Aug. 12, 1868 | ..... | Aug. 11, 1868 | 640,000 | |
| | Aug. 29, 1868 | ..... | Aug. 28, 1868 | 640,000 | |
| | Sep. 7, 1868 | ..... | Sep. 7, 1868 | 1,280,000 | |
| | Sep. 23, 1868 | ..... | Sep. 23, 1868 | 640,000 | |
| | Oct. 22, 1868 | ..... | Oct. 21, 1868 | 640,000 | |
| | Nov. 20, 1868 | ..... | Nov. 19, 1868 | 640,000 | |
| | Dec. 7, 1868 | ..... | Dec. 7, 1868 | 1,280,000 | |
| | Dec. 15, 1868 | ..... | Dec. 14, 1868 | 640,000 | |
| | Dec. 17, 1868 | ..... | Dec. 16, 1868 | 640,000 | |
| | Dec. 24, 1868 | ..... | Dec. 23, 1868 | 640,000 | |
| | Dec. 24, 1868 | ..... | Dec. 24, 1868 | 640,000 | |
| | July 15, 1870 | ..... | Nov. 21, 1868 | 1,512 | |
| January 1, 1899 ..... | Jan. 29, 1869 | ..... | Jan. 29, 1869 | 640,000 | |
| | Feb. 10, 1869 | ..... | Feb. 10, 1869 | 1,280,000 | |
| | July 22, 1869 | ..... | July 16, 1869 | 640,000 | |
| | Nov. 10, 1869 | ..... | July 16, 1869 | 437,000 | |
| | July 14, 1870 | ..... | July 16, 1869 | 160,000 | |
| Total ... | ..... | ..... | ..... | ..... | 27,236,512 |

61. That said subsidy bonds so issued by the United States to said railroad company were by said railroad company sold, and the proceeds of such sales were by said railroad company applied to its own use and in aid of the construction and equipment of its said railroad.

62. That under the provisions of said Acts of July 1, 1862, and July 2, 1864, the United States, commencing in the year 1867, continuously retained one-half of the earnings of said railroad company derived from the transportation of the mails, troops, munitions of war, supplies and public stores (hereinafter called government property) for the government of the United States, and applied the same, from time to time, upon account of the interest paid by the United States upon said subsidy bonds issued by the United States to said railroad company.

63. That commencing in the year 1873, and following the Act of Congress of March 3, 1873, the United States claimed the right to and did retain the entire earnings of said railroad company derived from the transportation of such government property for the government of the United States, and applied the same upon its said interest account, and so continued to retain and apply all of such earnings until during the year 1878.

64. That on July 1, 1878, the Act of Congress approved May 7, 1878, known as the "Thurman Act," became operative, and that thereupon and thereafter the entire earnings of said railroad company derived from the transportation of government property were retained by the United States, and the direct annual payments required to be made by said railroad company to the United States by the terms of said Act were settled, and said amounts so retained and received were applied, all in compliance with the terms of said act.

65. That it having been determined that the said railroad company had been entitled to receive from the United States payment of one-half of its earnings derived from the transportation of government property for the entire period from the commencement of the operation of its railroad to July 1, 1878, and that while the United States had retained the whole of such earnings from March, 1873, to July 1, 1878, it had so retained one-half of such earnings for said period, improperly, the claim of the said railroad company in respect of the one-half of its

said earnings so improperly withheld by the United States for said period, was settled and adjusted under the provisions of said Act of May 7, 1878, by applying the same in satisfaction of the obligation of said railroad company to pay to the United States five per centum of its net earnings as provided in Section Six of said Act of July 1, 1862, from the time of the completion of its said railroad to July 1, 1878; and by applying the excess thereof in satisfaction of the amounts required to be paid by said railroad company under the provisions of said Act of May 7, 1878, in part on account of five per centum of net earnings provided to be paid by the terms of said Act of July 1, 1862, and in part upon the sinking-fund requirements provided and established by said Act of May 7, 1878.

66. That the United States has, since July 1, 1878, under the authority of said Act of May 7, 1878, retained the entire earnings of said railroad company and of its successor, said Union Pacific Railway Company, derived from transportation of government property over the line of said railway company, known as the Union Division of its railway property, including said Bridge Division, until the appointment, as aforesaid, of Receivers of said property in said Ames cause on October 13, 1893; and that since said date it has retained all of such earnings derived from transportation of such property on the said line of railway exclusive of said Bridge Division thereof.

67. That one-half of such earnings upon transportation of government property so retained since July 1, 1878, have been applied and credited by the United States on account of interest which has matured and been paid by the United States on said subsidy bonds, and that the United States has made and stated herein its account of said subsidy bonds issued, the interest which it has paid thereon, and of the amounts which it has credited thereon for the said earnings withheld by it, for the period from the inception of said account to April 1, 1897.

68. That said account as so stated is as follows:

# STATEMENT B, UNION PACIFIC R. R. CO.

*Statement showing Interest paid by the United States on Bonds Issued to the Union Pacific Railway Company, Interest repaid by the Company and Balance of Interest due the United States, April 1, 1897.*

| | | Interest paid by the United States | Six months period ending | Reimbursed by Railroad Company | | Balance of interest paid by the United States not reimbursed each six months | Reimbursed in excess of interest paid by the United States each six months | Total balance of Interest paid not reimbursed |
|---|---|---|---|---|---|---|---|---|
| | | | | By ½ Transportation each six months ending | By 5% net earnings | | | |
| Total amount of bonds Issued $27,236,512 | July 1, 1866 | 19,917.09 | | | | 19,917.09 | | 19,917.09 |
| | Jan. 1, 1867 | 97,755.65 | | | | 97,755.65 | | 117,672.74 |
| | July 1, 1867 | 147,826.87 | Dec. 31, 1867 | 249,191.98 | | | 101,365.11 | 16,307.63 |
| | Jan. 1, 1868 | 210,562.28 | June 30, 1868 | 275,661.05 | | | 65,098.77 | 48,791.14 |
| | July 1, 1868 | 288,593.86 | Dec. 31, 1868 | 194,361.84 | | 94,232.02 | | 45,440.88 |
| | Jan. 1, 1869 | 549,109.77 | June 30, 1869 | 187,231.24 | | 361,878.53 | | 407,319.41 |
| | July 1, 1869 | 768,104.37 | Dec. 31, 1869 | 200,981.43 | | 567,122.94 | | 974,442.35 |
| | Jan. 1, 1870 | 809,859.96 | June 30, 1870 | 141,149.33 | | 627,710.63 | | 1,602,152.98 |
| | July 1, 1870 | 821,641.20 | Dec. 31, 1870 | 145,375.46 | | 676,265.74 | | 2,278,418.72 |
| | Jan. 1, 1871 | 817,095.36 | June 30, 1871 | 320,350.82 | | 496,744.54 | | 2,775,163.26 |
| | July 1, 1871 | 817,095.36 | Dec. 31, 1871 | 209,130.82 | | 607,964.54 | | 3,383,127.80 |
| | Jan. 1, 1872 | 817,095.36 | June 30, 1872 | 217,139.35 | | 599,956.01 | | 3,983,083.81 |
| | July 1, 1872 | 817,095.36 | Dec. 31, 1872 | 115,302.58 | | 701,792.78 | | 4,684,876.59 |
| | Jan. 1, 1873 | 817,095.36 | June 30, 1873 | 86,143.77 | | 730,951.59 | | 5,415,828.18 |
| | July 1, 1873 | 817,095.36 | Dec. 31, 1873 | 228,459.67 | | 588,635.69 | | 6,004,463.87 |
| | Jan. 1, 1874 | 817,095.36 | June 30, 1874 | 204,694.76 | | 612,400.60 | | 6,616,864.47 |
| | July 1, 1874 | 817,095.36 | Dec. 31, 1874 | 243,981.38 | | 573,113.98 | | 7,189,978.45 |
| | Jan. 1, 1875 | 817,095.36 | June 30, 1875 | 444,670.66 | | 372,424.70 | | 7,562,403.15 |
| | July 1, 1875 | 817,095.36 | Dec. 31, 1875 | 438,889.51 | | 378,205.85 | | 7,940,609.00 |
| | Jan. 1, 1876 | 817,095.36 | June 30, 1876 | 135,989.12 | | 681,106.24 | | 8,621,715.24 |
| | July 1, 1876 | 817,095.36 | Dec. 31, 1876 | 47,166.78 | | 769,928.91 | | 9,391,643.55 |
| | Jan. 1, 1877 | 817,095.36 | June 30, 1877 | 660,170.10 | | 156,925.91 | | 9,548,569.06 |
| | July 1, 1877 | 817,095.36 | Dec. 31, 1877 | 347,062.17 | | 470,033.19 | | 10,018,602.25 |
| | Jan. 1, 1878 | 817,095.36 | June 30, 1878 | 718,767.11 | | 98,328.25 | | 10,116,930.50 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| July 1, 1879.. | 817,095.36 | Dec. 31, 1879.. | 96,266.48 | | 720,826.88 | | 11,006,760.67 |
| Jan. 1, 1880.. | 817,095.36 | June 30, 1880.. | 390,157.51 | | 427,937.85 | | 11,433,698.52 |
| July 1, 1880.. | 817,095.36 | Dec. 31, 1880.. | 188,452.45 | | 628,642.91 | | 12,062,341.43 |
| Jan. 1, 1881.. | 817,095.36 | June 30, 1881.. | 142,941.74 | | 674,153.62 | | 12,736,495.05 |
| July 1, 1881.. | 817,095.36 | Dec. 31, 1881.. | 91,416.14 | | 725,679.22 | | 13,462,174.27 |
| Jan. 1, 1882.. | 817,095.36 | June 30, 1882.. | 226,242.90 | | 590,852.46 | | 14,053,026.73 |
| July 1, 1882.. | 817,095.36 | Dec. 31, 1882.. | 362,451.25 | | 454,644.11 | | 14,507,670.84 |
| Jan. 1, 1883.. | 817,095.36 | June 30, 1883 | 117,304.02 | | 699,791.34 | | 15,207,462.18 |
| July 1, 1883.. | 817,095.36 | Dec. 31, 1883 | 588,845.95 | | 228,249.41 | | 15,435,711.59 |
| Jan. 1, 1884.. | 817,095.36 | June 30, 1884.. | 483,968.97 | | 333,126.39 | | 15,768,837.98 |
| July 1, 1884.. | 817,095.36 | Dec. 31, 1884.. | 489,741.82 | | 327,353.54 | | 16,096,191.52 |
| Jan. 1, 1885.. | 817,095.36 | June 30, 1885.. | 151,729.75 | 283,162, 99 | 382,202.62 | | 16,478,394.14 |
| July 1, 1885.. | 817,095.36 | Dec. 31, 1885.. | 182,820.83 | | 634,274.53 | | 17,112,668.67 |
| Jan. 1, 1886.. | 817,095.36 | June 30, 1886.. | 167,228.71 | | 649,866.65 | | 17,762,535.32 |
| July 1, 1886.. | 817,095.36 | Dec. 31, 1886.. | 178,203.56 | 155,246.59 | 483,645.21 | | 18,246,180.53 |
| Jan. 1, 1887.. | 817,095.36 | June 30, 1887.. | 195,069.94 | | 622,025.42 | | 18,868,205.95 |
| July 1, 1887.. | 817,095.36 | Dec. 31, 1887.. | 152,930.30 | | 664,165.06 | | 19,532,371.01 |
| Jan. 1, 1888.. | 817,095.36 | June 30, 1888.. | 193,944.26 | | 623,151.10 | | 20,155,522.11 |
| July 1, 1888.. | 817,095.36 | Dec. 31, 1888.. | 130,593.53 | | 686,501.83 | | 20,842,023.94 |
| Jan. 1, 1889.. | 817,095.36 | June 30, 1889.. | 144,984.85 | | 672,110.51 | | 21,514,134.45 |
| July 1, 1889.. | 817,095.36 | Dec. 31, 1889.. | 188,326.72 | | 628,768.64 | | 22,142,903.09 |
| Jan. 1, 1890.. | 817,095.36 | June 30, 1890.. | 164,677.16 | | 652,418.20 | | 22,795,321.29 |
| July 1, 1890.. | 817,095.36 | Dec. 31, 1890.. | 214,741.17 | | 602,354.19 | | 23,397,675.48 |
| Jan. 1, 1891.. | 817,095.36 | June 30, 1891.. | 240,850.47 | | 576,244.89 | | 23,973,920.37 |
| July 1, 1891.. | 817,095.36 | Dec. 31, 1891.. | 214,590.09 | | 602,505.27 | | 24,576,425.64 |
| Jan. 1, 1892.. | 817,095.36 | June 30, 1892.. | 266,350.11 | | 550,745.25 | | 25,127,170.89 |
| July 1, 1892.. | 817,095.36 | Dec. 31, 1892.. | 284.751.66 | | 532,343.70 | | 25.659,514.59 |
| Jan. 1, 1893.. | 817,095.36 | June 30, 1893.. | 245,511.58 | | 571,583.78 | | 26,231,098.37 |
| July 1, 1893.. | 817,095.36 | Dec. 31, 1893.. | 233,889.23 | | 583,206.13 | | 26,814,304.50 |
| Jan. 1, 1894.. | 817,095.36 | June 30, 1894.. | 268,039.31 | | 549,056.05 | | 27,363,360.55 |
| July 1, 1894.. | 817,095.36 | Dec. 31, 1894.. | 271,476.48 | | 545,618.88 | | 27,908,979.43 |
| Jan. 1, 1895.. | 817,095.36 | June 30, 1895.. | 270,761.10 | | 546,334.26 | | 28,455,313.69 |
| July 1, 1895.. | 817,095.36 | Dec. 31, 1895.. | 280,606.38 | | 536,488.98 | | 28,991,802.67 |
| Jan. 1, 1896.. | 817,095.36 | | | | | | |
| Feb. 1, 1896.. | 22,014.25 | June 30, 1896.. | 271,421.40 | | 567,688.21 | | 29,559,490.88 |
| July 1, 1896.. | 687,495.36 | Dec. 31, 1896.. | 282,319.85 | | 405,175.51 | | 29,964,666.39 |
| Jan. 1, 1897.. | 687,495.36 | 3 months ending Mar. 31, 1897.. | 126,243.66 | | 561,251.70 | | 30,525,918.09 |

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69. That of said subsidy bonds so issued by the United States to said railroad company four million three hundred twenty thousand dollars ($4,320,000) of the principal amount thereof became due on the first day of February, 1896, and that said principal amount of said bonds was then paid by the United States to the holders thereof.

70. That of said subsidy bonds so issued by the United States to said railroad company three million eight hundred forty thousand dollars ($3,840,000) of the principal amount thereof became due on the first day of January, 1897, and that the said principal amount of said bonds was then paid by the United States to the holders thereof.

71. That the total amount of said bond and interest account of the United States as above stated, including the amount paid by the United States upon the principal of its said bonds which matured on February 1, 1896, and January 1,1897, amounted on April 1, 1897, to

| | |
|---|---|
| Principal | $27,236,512 |
| Balance of Interest Account | $30,525,918 |
| Total | $57,762,430 |

That said bond and interest account cannot now be stated as of any date later than said April 1, 1897, and that said account as so stated is subject to be increased by interest accruing upon said subsidy bonds since April 1, 1897, and is subject to be diminished by earnings upon said line of railway for transportation of government property which are being withheld, and are subject to be applied upon said bond and interest account. That such earnings have been and are continuously made andearned, and are withheld for said account by the United States, which have not been credited in said account as above stated, and that credits for current earnings cannot be ascertained or entered in said account until long after the service has been rendered for which such credit is given.

That inasmuch as the interest upon said bonds continuously accrues, and the payments and earnings withheld subject to be credited upon said account likewise continually accrue, a final statement cannot now be made of the present balance of said account nor can such a

statement be made as of the first day of April, 1897, except subject to charges and credits not included therein, but such additional amounts subject to be so credited and the amounts subject to be added to the sinking fund hereafter mentioned have not exceeded the accumulation of the subsidy debt.

That the indebtedness of said The Union Pacific Railway Company, on account of said subsidy bonds, which has matured and is now due to the United States for the repayment of the amounts paid by the United States for principal of said matured subsidy bonds, and for repayment of the interest paid by the United States upon said matured subsidy bonds, calculating the interest upon said bonds down to April 30, 1897, and crediting a proportionate part of said bond and interest account as it stood on April 30, 1897 (such proportionate part to be paid calculated on the basis applicable to each of said amounts of matured bonds in the proportion which said amount bore to the total amount of said bonds outstanding), is as follows:

| | |
|---|---|
| Balance unreimbursed on bonds due February 1, 1896, on basis stated..... | $5,401,138 83 |
| On bonds which matured January 1, 1897.. | 4,928,490 35 |
| And the total amount of principal maturing on dates named, together with said unreimbursed interest thus calculated is..... | $18,489,629 18 |

SINKING FUND.

72. That by said Act of May 7, 1878, provision was made for a sinking fund for the purposes as in said Act provided, and that there has been, through payments made, and earnings upon transportation of government property withheld paid into said sinking fund by said railroad company and said railway company, and the Receivers of said property, including interest collected upon securities held in said sinking fund and passed to the credit thereof on December 31, 1896, the sum of nineteen million two hundred seventeen thousand seven hundred and thirteen and $\frac{40}{100}$ dollars ($19,217,713.40).

73. That the moneys so paid into said sinking fund have been from time to time invested in government and

railroad bonds, and that there were on April 30th, 1897, in said sinking fund, in the possession of the United States for the purposes as provided in said Act, of uninvested cash, the sum of three million nine hundred and forty-five thousand two hundred thirty-nine and $\frac{89}{100}$ dollars ($3,945,239.89), and bonds in the amounts and of the description as set forth in the following statement, which statement is made and certified by the Treasurer of the United States and made a part of the evidence in this cause.

## STATEMENT C, UNION PACIFIC R. R. CO.

*Statement of Bonds in Sinking Fund of the Union Pacific Railroad, April* 1, 1897.

| Bonds | Not Due | Due But Unpaid | Rate of Interest | Maturity of Bond | Interest Payable | Date of last payment of Interest |
|---|---|---|---|---|---|---|
| | | | (per cent) | | (1st day of) | |
| U. S. 5% of 1904 | $915,750 | ..... | 5 | Feb. 1, 1904. | Feb. May. Aug. Nov .... | Feb. 1, 1897. |
| U. S. 6% of 1898 | 523,000 | ..... | 6 | Jan. 1, 1898. | Jan'y July ..... | Jan. 1, 1897. |
| U. S. 6% of 1899 | 41,000 | ..... | 6 | Jan. 1, 1899. | Jan'y July ..... | Jan. 1, 1897. |
| First Mortgage Bonds: | | | | | | |
| Union Pacific due Jan'y 1, 1896 | ..... | $929,000 | 6 | Jan. 1, 1896. | Jan'y July ..... | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1897 | ..... | 350,000 | 6 | Jan. 1, 1897. | Jan'y July ..... | Jan. 1, 1897. |
| Union Pacific due July 1,1897 | 473,000 | ..... | 6 | July 1, 1897. | Jan'y July ..... | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1898 | 1,534,000 | ..... | 6 | Jan. 1, 1898. | Jan'y July ..... | Jan. 1, 1897. |
| Union Pacific due July 1, 1898 | 2,536,000 | ..... | 6 | July 1, 1898. | Jan'y July ..... | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1899 | 545,000 | ..... | 6 | Jan. 1, 1899. | Jan'y July ..... | Jan. 1, 1897. |
| Central Pacific due Jan'y 1, 1898 | 2,229,000 | ..... | 6 | Jan. 1, 1898. | Jan'y July ..... | Jan. 1, 1897. |
| Kansas Pacific due Aug. 1, 1895 | ..... | 549,000 | 6 | Aug. 1, 1895. | Feb. Aug ..... | Aug. 1, 1895. |
| Kansas Pacific due June 1, 1896 | ..... | 929,000 | 6 | June 1, 1896. | June Dec ..... | Dec. 1, 1894. |
| Sioux City and Pacific due Jan'y 1, 1898 | 716,500 | ..... | 6 | Jan. 1, 1898. | Jan'y July ..... | Jan. 1, 1897. |
| Central Branch due May 1, 1895 | ..... | 1,025,000 | 6 | May 1, 1895. | May Nov ..... | Nov. 1, 1893. |
| Western Pacific due July 1, 1899 | 350,000 | ..... | 6 | July 1, 1899. | Jan'y July ..... | Jan. 1, 1897. |
| | 9,863,250 | 3,782,000 | | | | |
| Total Bonds in Fund— | ..... | 13,645.250 | | | | |

Uninvested cash in said Sinking Fund, April 1, 1897,$3,939,420.62.

That said sinking fund is being continually increased by additions thereto from earnings from transportation of government property upon said line of railway, withheld by the United States and applied to the purposes of said sinking fund, and that large amounts have been earned on account of such transportation, by or on behalf of said railway company, which, in the course of business, will properly be, but have not yet been credited in said account of said sinking fund, as above stated, and that credits for current earnings withheld cannot be ascertained or entered in said account until long after the service is rendered for which said credit is given.

That the exact value of said sinking fund cannot, therefore, be stated as of current date, but that the value of the securities and cash held in said sinking fund, as above described, are found to be as follows:

| | | | | |
|---|---|---|---|---|
| U. S. 5% bonds of 1904 | $915,750 at 112¾ | $1,033,652.81 and interest from Feb. 1, 1897 | | $11,446.87 |
| U. S. 6% bonds of 1898 | 523,000 at 102¼ | 514,113.75 and interest from Jan. 1, 1897 | | 10,460.00 |
| U. S. 6% bonds of 1899 | 41,000 at 105¼ | 43,101.25 and interest from Jan. 1, 1897 | | 820.00 |
| First Mortgage Bonds: | | | | |
| Union Pacific due Jan. 1, 1896 | 929,000 at 100¼ | 930,161.25 and interest from Jan. 1, 1897 | | 18,580.00 |
| Union Pacific due Jan. 1, 1897 | 350,000 at 100¼ | 350,437.50 and interest from Jan. 1, 1897 | | 7,000.00 |
| Union Pacific due July 1, 1897 | 473,000 at 100¼ | 473,591.25 and interest from Jan. 1, 1897 | | 9,460.00 |
| Union Pacific due Jan. 1, 1898 | 1,534,000 at 100¼ | 1,543,587.50 and interest from Jan. 1, 1897 | | 30,680.00 |
| Union Pacific due July 1, 1898 | 2,536,000 at 100¼ | 2,551,850.00 and interest from Jan. 1, 1897 | | 50,720.00 |
| Union Pacific due Jan. 1, 1899 | 545,000 at 101¼ | 551,131.25 and interest from Jan. 1, 1897 | | 10,900.00 |
| Central Pacific due Jan. 1, 1898 | 2,229,000 at 100¼ | 2,234,572.50 and interest from Jan. 1, 1897 | | 44,580.00 |
| Kansas Pacific due Aug. 1, 1895 | 549,000 at 99¼ | 544,882.50 and interest from Aug. 1, 1895 | | 57,645.00 |
| Kansas Pacific due June 1, 1896 | 929,000 at 99¼ | 922,032.50 and interest from Dec. 1, 1894 | | 134,705.00 |
| Sioux City & Pacific due Jan. 1, 1898 | 716,500 at 100 | 716,500.00 and interest from Jan. 1, 1897 | | 14,330.00 |
| Central Branch due May 1, 1895 | 1,025,000 at 35 | 358,750.00 no interest | | |
| Western Pacific due July1, 1899 | 350,000 at 100¼ | 350,437.50 and interest from Jan. 1, 1897 | | 7,000.00 |
| Face amount of bonds | $13,645,250 | | | $408,326.87 |
| Present value principal | | $13,138,801.56 | | |
| Present value of principal of bonds | | | $13,138,801.56 | |
| Uninvested cash in said sinking fund April 30th, 1897 | | | 3,945,239.89 | |
| Interest unpaid computed to April 30th, 1897 | | | 408,326.87 | |
| Total value as of April 30th, 1897 | | | $17,492,368.32 | |

LAND-GRANT MORTGAGE.

75. That said The Union Pacific Railroad Company, for the purpose of providing means to construct and complete its railroad and telegraph line, made, executed and issued under its corporate seal, under date of April 16, 1867, to Cyrus J. McCormack, of the City of New York, and John Duff, of the City of Boston, as trustees, its certain mortgage upon the several sections of land granted to said Railroad Company by said act of Congress, with all the estate, right, title, interest, claim and demand, at law or in equity, which said Railroad Company had then, or might thereafter, acquire in and to the same, saving, excepting and reserving, however, all parts and parcels of said lands which were, or should be, included in said railroad and telegraph line of said Company, or used for the construction or operation thereof, or for the tracks, yards, depot grounds, buildings or erections thereof, to secure the bonds of said Company which it was provided by the terms of the said mortgage should be issued thereunder to to an amount not exceeding ten thousand (10,000) dollars for each mile of railroad and telegraph line of said Railroad Company, said bonds to be severally for the sum of one thousand (1,000) dollars each, and payable to the bearer thereof twenty years after the date thereof, with semi-annual interest at the rate of seven per cent. per annum, payable on every the first day of April and October ensuing after the date thereof, until the principal sum should be paid, according to the tenor of said coupons.

76. That there were executed and issued by said railroad company ten thousand four hundred (10,400) of said bonds so secured by said mortgage, in the agregate amount of ten million four hundred thousand (10,400,000) dollars.

77. That of said bonds so issued there have been heretofore retired ten thousand three hundred ninety-three (10,393) thereof, aggregating ten million three hundred ninety-three thousand (10,393,000) dollars, and that there now remain outstanding of said bonds so issued under said mortgage, seven bonds, aggregating seven thousand dollars and no more, and that said bonds so outstanding are long since due, and that there has been provided and deposited by said Railroad Company with the Union Trust Company of New York, as trustee, for the

purpose of paying said bonds upon presentation, a sum sufficient for such purpose, and that such sum now remains on deposit with said Union Trust Company of New York, subject to be applied in payment of said bonds upon presentation thereof.

INCOME MORTGAGE.

78. That said The Union Pacific Railroad Company made, executed and delivered, under its corporate seal, under date of September 1, 1869, to John R. Duff, Benjamin E. Bates and F. Gordon Dexter, as trustees its indenture known and hereinafter referred to as Income Mortgage, whereby, to provide for the payment of the interest warrants at the rate of ten per cent. per annum upon its income bonds in the aggregate amount of ten million (10,000,000) dollars, it pledged to said trustees the net income derived from its said railroad property, after deducting therefrom the interest upon its first mortgage bonds and upon its land grant mortgage bonds, and covenanted to apply such income in payment of such interest warrants upon said bonds as the same matured, to the extent thereof, together with the compensation of said trustees for the performance of their said trust.

That said trust was accepted by said trustees, and that the bonds provided for in said income mortgage were issued in the aggregate amount of ten million (10,000,000) dollars.

79. That, thereafter, and by means of provisions made therefor by said Railroad Company in issuing its mortgage of date December 18, 1873, known as its Sinking Fund Mortgage, said income bonds were retired, and that they are not now existing obligations of said The Union Pacific Railway Company.

SINKING FUND MORTGAGE.

80. That the Union Pacific Railroad Company, pursuant to authority of law and to due corporate action taken by it in that behalf, and for the purpose of paying its bonds issued under its said land grant mortgage, dated April 16, 1867, and its bonds issued under said income mortgage, dated September 1, 1869, or retiring said bonds by exchanging therefor coupon bonds to be issued under

its mortgage now described, and for the purpose of raising money to meet other of its obligations, duly made and executed under its corporate seal, and delivered to the Union Trust Company of New York, as trustee, its mortgage or deed of trust dated the 18th day of December, 1873, wherein and whereby said railroad company did, for the purpose of securing the payment of its bonds issued under and secured by said mortgage, grant, bargain, sell, release, convey and confirm, unto said Union Trust Company, as trustee, and in trust for the purposes aforesaid, and to its successor, all and singular the right, title, estate and interest of said railroad company, of, in and to its railroad extending from the City of Omaha, in the State of Nebraska, to a point five miles west of Ogden, in the Territory of Utah, and its appurtenances, together with all its lands, tenements, hereditaments, rights of way and easements, acquired or owned, or which should be thereafter acquired or owned, for the purpose of a right of way for a single, double or other track railroad, and for depots, engine houses, car houses, station houses, warehouses, machine shops, superstructures erections, fixtures and appurtenances and property necessary or convenient for the use of said railroad, also all the rails, depots, yards, engine houses, carhouses, warehouses, round houses, machine shops, work shops and other structures and fixtures of said Railroad Company, also all goods and chattels then owned or which should thereafter be owned or acquired by said Railroad Company, necessary or convenient to said railroad, or the running and operation of the same, or used or employed therein or in connection therewith; subject, however to the mortgage of said Railroad Company hereinbefore described as its first mortgage, dated November 1, 1865, and also to the lien or mortgage of the United States, arising from the issuance of its subsidy bonds in aid of the construction of said railroad, and also conveyed to said trustee to secure said bonds, all and singular, the lands granted to said Railroad Company by acts of Congress, and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in or to the same or any part or parcel thereof, which said Railroad Company then had, held or owned, or was entitled to or might or should thereafter acquire, have, hold, own or be

or become entitled to by force or virtue of said acts of Congress, saving and excepting all parts or parcels of said lands which had been, previous to the execution of said mortgage, conveyed or contracted to be conveyed by said Railroad Company to purchasers thereof.

81. That said mortgage, immediately upon its execution, was duly recorded in the several offices of registry in the several states and counties in which the property described in said mortgage was situated.

82. That under terms and provisions of said mortgage, and in accordance therewith, said Railroad Company issued its bonds secured thereby in the total amount of sixteen million (16,000,000) dollars, which bonds were duly certified by said trustee and were sold by said Railroad Company, and the proceeds derived from such sale were by it applied according to the terms and provisions of said mortgage.

83. That said bonds bear interest at the rate of eight per cent. per annum, payable semi-annually, and that the principal thereof fell due on the first day of September, 1893.

84. That through payments made to said trustee by said Railroad Company and its successor The Union Pacific Railway Company, and through moneys derived from sales of land embraced and covered by said mortgage, and, through the operation of the sinking fund provisions therein contained, there had been paid and canceled of said bonds so issued as aforesaid under said mortgage the amount of ten million eight hundred thirty-eight thousand (10,838,000) dollars of the principal thereof, together with the interest thereon, on August 9, 1893, upon which date said Railway Company entered into an agreement with said Union Trust Company, of New York, as trustee, providing for the extension of the time of payment of said bonds then remaining unpaid, until the first day of September, 1899.

85. That upon the execution of said extension agreement, and under its terms, such of said bonds as were presented by the holders thereof were so extended until said last-named date, by an agreement stamped upon each of said bonds by said railway company or its agent authorized in that behalf so to do.

86. That there are now outstanding of said bonds, se-

cured by said mortgage of December 18, 1873, three thousand seven hundred thirty-eight (3,738) bonds, in the principal sum of three million seven hundred thirty-eight thousand (3,738,000) dollars, of which bonds all but eight thousand (8,000) dollars have been extended under said extension agreement dated August 9, 1893.

87. That, except as stated, all the bonds issued under said mortgage have been paid and canceled, together with the interest thereon, and that interest upon the bonds now as aforesaid outstanding has been paid up to and including the installment of interest which fell due on the first day of March, 1896.

88. That there is now owing upon said bonds said principal sum of $3,738,000, with interest thereon from March 1, 1896, at the rate of eight per cent. per annum.

OMAHA BRIDGE MORTGAGE.

89. That the Union Pacific Railroad Company under and in pursuance of the power and authority conferred upon it by the said Acts of Congress of the United States approved July 1st, 1862, and July 2nd, 1864, and the Act of Congress approved February 24th, 1871, built and constructed as a part of its said line of railroad said bridge across the Missouri River between Omaha, in the State of Nebraska, and Council Bluffs, in the State of Iowa, together with the approaches thereto and appurtenances thereof, and said Railroad Company, for the purpose of purchasing and acquiring the lands and materials necessary for the construction of the said bridge and its approaches and connecting lines, and for constructing the same, and pursuant to the authority of said Act of February 24th, 1871, and to due corporate action, issued its Bridge Bonds, each for the sum of one thousand dollars United States gold coin, or two hundred pounds British sterling money, the principal of which was payable on the first day of April, 1896, unless sooner redeemed, with interest in the meantime from the first day of April, 1871, on the principal sum at the rate of eight per centum per annum, payable by half-yearly installments of forty dollars in United States gold coin, or eight pounds five shillings and nine pence British sterling money, each on the first day of October and first day of April in each year, in United States gold coin, upon presentation of the coupons

attached to the said bonds; and, for the purpose of securing the payment of said bonds and interest, said Railroad Company, pursuant to like authority of law and corporate action, made, executed and delivered to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins its mortgage dated on the first day of April, 1871, wherein and whereby it granted, bargained, sold, assigned, transferred, set over, enfeoffed, conveyed and confirmed to said Trustees and to their heirs and successors, and the survivor or survivors of them, and the heirs of such survivors, all and singular the said bridge over the Missouri River between Omaha and Council Bluffs, and the approaches thereof and appurtenances belonging thereto, including all parts and portions of the said bridge then constructed or thereafter to be constructed, and the depots at Council Bluffs and Omaha aforesaid, and the lands and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the neighboring lines, including in said conveyance as well the lines and tracks then constructed or those which might thereafter be constructed, and also all estates, terms and rights of way for the said bridge approaches and appurtenances as well, then held by the Company as thereafter acquired by it, and all the rights and privileges of the Company in or to the said bridge, approaches or appurtenances, or touching and concerning or appertaining to the maintenance, use or occupation thereof.

90. That said bonds and mortgage were in the form and contained the provisions as stated in the answer of the defendants Morgan and Atkins, trustees, herein.

91. That on or about the 27th day of September, 1871, said The Union Pacific Railroad Company made, executed and delivered to said John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as trustees, its supplemental mortgage, bearing said date, which mortgage was in the form and contained the provisions as stated in the answer of Morgan and Atkins, trustees, in this cause in the District of Nebraska and the Southern District of Iowa, and in which supplemental mortgage it was provided, among other things, that all the said bonds should bear interest at the rate of two-fifths of one per cent. per annum, in addition to the annual eight per cent. interest provided for in the mortgage dated April 1, 1871,

which said interest of two-fifths of one per cent. should be paid in a gross of ten per cent. upon the nominal amount of the bond at the time when the principal of the bond became payable under the terms or conditions of said indenture, excepting always that those bonds which should be drawn and redeemed at ten per cent. per annum before maturing by the sinking fund, should not carry said interest of two-fifths of one per cent.; and the trustees under said mortgage were authorized and empowered to retain and deduct and to pay and discharge such installment of interest out of any funds or moneys of the company coming into their hands.

92. That said mortgage and said supplemental mortgage were duly recorded in the office of the County Recorder of Pottawattomie County, Iowa, on the 3d day of October, 1871, and that the said original mortgage was duly recorded in the office of the Register of Deeds of Douglas County, Nebraska, at about said date.

93. That said bonds so issued and secured by said Bridge Mortgage of April 1, 1871, and said supplemental mortgage of September 27, 1871, are outstanding and unpaid, in the face amount of three hundred ninety-two thousand (392,000) dollars, and that all of said bonds matured and became due on or prior to April 1, 1896, and that under the terms of said mortgage and said supplemental mortgage the principal amount due on said bonds is the face amount thereof and ten per cent. in addition thereto, being the amount of four hundred thirty-one thousand and two hundred (431,200) dollars, and that the interest upon said bonds has been paid to the 1st day of April, 1897, and that the interest thereon since said date, at the rate of eight per cent per annum on said face amount, remains unpaid.

That said John Edgar Thomson and Elisha Atkins have since died, and that said John Pierpont Morgan, by survivorship, and Edwin F. Atkins, by due appointment, are now the trustees under said Bridge Mortgage of April 1, 1871, and the supplemental indenture of September 27, 1871.

### Omaha Bridge Renewal Mortgage.

94. That the Union Pacific Railway Company heretofore and under date of October 1, 1885, made, executed

nd delivered to the Central Trust Company of New ork as Trustee, defendant herein, its certain mortgage r deed of trust known and hereinafter referred to as he Omaha Bridge Renewal Mortgage, wherein and hereby it granted and conveyed to said trustee all nd singular the bridge of said railway company with s approaches and appurtenances thereto belonging, over he Missouri River between Council Bluffs, Iowa, and maha, Nebraska, which mortgage was executed by said ailway company under and pursuant to due corporate ction by said railway company in respect thereto, and was elivered to said Central Trust Company of New York, hich accepted the trust therein imposed.

95. That said mortgage was and is in terms as fol-ows:

## OMAHA BRIDGE RENEWAL MORTGAGE.

### The Union Pacific Railway Company.

This Indenture made this first day of October, A. D. 885, between the Union Pacific Railway Company, here-nafter called the "Railway Company," party of the first art, and the Central Trust Company of New York, here-nafter called the "Trustee," party of the second part, Witnesseth:

*Whereas*, By an act of Congress approved Feb. 24th, 871, the Union Pacific Railroad Company, of which the arty of the first part is the successor by consolidation, uly authorized and made, was authorized to construct a ridge and railroad line across the Missouri River, be-ween Omaha, Nebraska, and Council Bluffs, Iowa, and o issue bonds not exceeding two and one-half million dol-ars, as said Company might deem needful for that pur-ose, and secure the same by mortgage on the bridge, its pproaches and appurtenances; and

*Whereas*, Under such authority, the Union Pacific Railroad Company heretofore issued bonds to the amount of $2,500,000; and secured the same by a mortgage on the said bridge, its approaches and appurtenances, dated the first day of April, 1871, and a supplemental mortgage, dated the twenty-seventh day of September, 1871, which

mortgages have been duly recorded and are hereby referred to for greater certainty; and

*Whereas*, Under the operation of the sinking fund provisions contained in said mortgages, the bonds secured thereby have, from year to year, commencing with the years 1871-72 down to and including the years 1884-85, been redeemed, to the amount of $879,000; and

*Whereas*, At the date of this indenture, the balance of the principal sum of said mortgage amounts to $1,621,000, and is unpaid, as well as the interest to accrue thereon; and

*Whereas*, The said railway company as such successor of the said Union Pacific Railroad Company is authorized by Act of Congress to fund and renew said debt now remaining unpaid, secured by said existing bridge mortgages, to an amount not exceeding $2,500,000, and to execute a mortgage to secure the same; and

*Whereas*, The said railway company has resolved, for the purpose aforesaid, that it will issue such number of new five per cent. bonds of one thousand dollars each, not exceeding twelve hundred and fifty of such bonds, as may be necessary to fund and renew the principal due, and to become due, under the said mortgages, including sinking fund requirements, and will execute a mortgage on the said bridge, approaches, appurtenances and earnings to the party of the second part hereto, which said new bonds shall be used exclusively for the purpose of funding or renewing the principal due, or which may, from time to time, become due or payable, of the outstanding bonds, secured by said existing bridge mortgages, or which is or may become due or payable from time to time under the sinking fund requirements of said mortgages, provided the aggregate issue of said bonds secured hereby shall not exceed $1,250,000, which said bonds are in the following form:—

No. $1,000.

## UNITED STATES OF AMERICA.

### The Union Pacific Railway Company.

### Omaha Bridge Renewal Bond.

*For value received*, The Union Pacific Railway Company promises to pay to bearer at the office of the company in Boston, or at the agency of the company in the city of New York, on the first day of October, A. D. 1915, one thousand dollars in gold coin of the present weight and fineness, with interest thereon at the rate of five per cent. per annum, payable semi-annually on the first day of April and October in each year, in like gold coin, upon presentation and surrender of the annexed coupons therefor.

This bond is one of a series of bonds, not exceeding twelve hundred and fifty, of even date herewith, of one thousand dollars each, and numbered from one upwards, the payment of which is secured by a mortgage of even date herewith, made by said railway company to the Central Trust Company of New York, as trustee, on the bridge of said company over the Missouri River, between Omaha, Nebraska, and Council Bluffs, Iowa, and its approaches and appurtenances, as authorized by Acts of Congress of the United States; which said mortgage creates a sinking fund, out of the proceeds of which this bond may, at the option of the holder thereof, be paid as provided in said mortgage. This bond is not to become obligatory until the certificate herein is signed by the trustee.

*In witness whereof*, the said railway company has hereunto set its corporate seal, and caused this bond to be executed by its President and attested by its Secretary, this the first day of October, A. D. 1885.

The Union Pacific Railway Company,

By *President.*

Attest:

, *Secretary.*

[FORM OF COUPON.]

$25.

The Union Pacific Railway Company will on the first day of , 1 , pay to bearer at the company's office, in Boston, or at its agency, in the City of New York, the sum of twenty-five dollars, being six months' interest on Omaha Bridge Renewal Mortgage Bond No.

HENRY MCFARLAND, *Treasurer*..

[FORM OF TRUSTEE'S CERTIFICATE.]

It is hereby certified, that this is one of the bonds of one thousand dollars each, issued under an indenture of mortgage to the undersigned as trustee.

CENTRAL TRUST COMPANY, TRUSTEE.

By *President.*

*And whereas*, The annual payments, in order to fund and retire said existing bridge bonds, secured by said mortgages of April 1, 1871, and Sept. 27, 1871, will require the sums stated in the last column in the following table:

# THE UNION PACIFIC RAILWAY COMPANY, OMAHA BRIDGE BONDS.

*Statement of Bonds Redeemable Oct. 1, 1885, to Maturity.*

| Date of Semi-annual Payments | Amount of Bonds Outstanding | Bonds Redeemable |
|---|---|---|
| tober 1, 1885 | $1,621,000.00 | ..... |
| pril 1, 1886 | 1,621,000.00 | $102,000.00 |
| tober 1, 1886 | 1,519,000.00 | ..... |
| pril 1, 1887 | 1,519,000.00 | 109,000.00 |
| tober 1, 1887 | 1,410,000.00 | ..... |
| pril 1, 1888 | 1,410,000.00 | 117,000.00 |
| tober 1, 1888 | 1,293,000.00 | ..... |
| pril 1, 1889 | 1,293,000.00 | 126,000.00 |
| tober 1, 1889 | 1,167,000.00 | ..... |
| pril 1, 1890 | 1,167,000.00 | 135,000.00 |
| tober 1, 1890 | 1,032,000.00 | ..... |
| pril 1, 1891 | 1,032,000.00 | 145,000.00 |
| tober 1, 1891 | 887,000.00 | ..... |
| pril 1, 1892 | 887,000.00 | 155,000.00 |
| tober 1, 1892 | 732,000.00 | ..... |
| pril 1, 1893 | 732,000.00 | 167,000.00 |
| tober 1, 1893 | 565,000.00 | ..... |
| pril 1, 1894 | 565,000.00 | 179,000.00 |
| tober 1, 1894 | 386,000.00 | ..... |
| pril 1, 1895 | 386,000.00 | 192,000.00 |
| tober 1, 1895 | 194,000.00 | ..... |
| pril 1, 1896 | 194,000.00 | 194,000.00 |
| | Total ..... | $1,621,000.00 |

*Now, this Indenture witnesseth*, That the said railway company doth hereby covenant and agree with and to the said trustee, in the manner, following, that is to say:

ARTICLE 1. That the said railway company, in consideration of the premises and in order to secure the punctual payment of the principal and interest of the said Bridge Renewal Bonds, to be issued as aforesaid, doth by these presents grant, bargain, sell, assign, transfer and convey unto the said party of the second part, trustee as aforesaid, and to its successors and assigns, as such trustee, all and singular the bridge, approaches and appurtenances thereto, over the Missouri River, between Council Bluffs, Iowa, and Omaha, Nebraska, mentioned and described in said Act of Congress, approved Feb. 24, 1871, together with the rents, earnings, issues, tolls, incomes and profits thereof, including all parts and portions of said bridge, now constructed or hereafter to be constructed, and the

depots at Council Bluffs and Omaha aforesaid, and the railroad thereover, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same, with the lines of any railroad that are now, or shall hereafter be, constructed to the Missouri River at Council Bluffs, Iowa, or Omaha, Nebraska, a map and description representing and describing the general features of which property is hereto annexed and made a part hereof, but the same shall not be considered exclusive of other property covered hereby; and also all the estates, lines, rights of way, as well now held by the company as to be hereafter acquired by it, and all the rights and privileges of the company of, in, or to the said bridge, approaches and appurtenances, or touching, concerning or appertaining to the maintenance, use and occupation thereof; and also all and singular the franchises now owned, possessed or acquired, or which shall hereafter be owned, possessed or acquired, by said railway company in respect of said bridge, approaches and appurtenances thereto and railroad thereover.

*To have and to hold* said premises unto the party of the second part, trustee as aforesaid, its successors and assigns forever, upon the trust, to hold the same for the use, benefit, and security of all and singular the persons and corporations who or which shall from time to time be lawful owners and holders of any of said bonds issued hereunder and for securing the payment of the principal and interest of such bonds; and for the uses and purposes, and upon and with the conditions and powers in and by these presents expressed and declared, subject only, however, to such lien thereon, or the parts or parcels thereof, as may at the date of these presents have been created by said existing mortgages, until the same shall have been surrendered, paid and satisfied in the manner hereinafter provided, and so far only as the same may be legally entitled to priority over the liens and rights created hereby. The said Railway Company covenants that these presents constitute the only lien on said property and rights, except as above declared, at the date of these presents, and that it will not dispose of nor employ the earnings of the property hereby mortgaged in any manner inconsistent with the provisions hereof.

The said railway company covenants to and with

the said trustee herein, that it will not issue, sell and negotiate bonds to be issued hereunder in any manner inconsistent with the provisions of this indenture, and that it will apply the said bonds secured hereby, or the proceeds thereof, exclusively for the purpose of funding, and renewing said existing and outstanding bridge bonds in the manner herein provided; to secure which, to the holders of the bonds to be issued hereunder, it is hereby covenanted by the said railway company with each holder of any bond secured hereby, that the said trustee herein shall certify and deliver bonds hereunder, only at the times and in the amounts following:—

| | |
|---|---|
| April 1, 1886 | $102,000 |
| April 1, 1887 | 109,000 |
| April 1, 1888 | 117,000 |
| April 1, 1889 | 126,000 |
| April 1, 1890 | 135,000 |
| April 1, 1891 | 145,000 |
| April 1, 1892 | 155,000 |
| April 1, 1893 | 167,000 |
| April 1, 1894 | 179,000 |
| April 1, 1895 | 15,000 |
| | $1,250,000 |

The said railway company hereby covenants and agrees with the said trustee and each bondholder secured hereby, to well, truly, and punctually pay the interest on, fulfill the sinking fund requirements in respect of, and fund and retire, the existing bridge bonds, and cancel and satisfy the same, as the same become due and payable; and that at the maturity of said existing bonds, it will cause said existing mortgage to be duly cancelled and discharged of record, or assigned to the trustees hereunder, or held exclusively for the benefit of the bonds issued hereunder, as the trustee may require of it; and also that it will not extend the time of payment of the principal, or any part of the interest of said existing bonds as the same mature, but will pay and cancel the coupons and principal as the same fall due.

In no case shall any of the bonds secured hereby be certified by the said trustee, except upon delivery to it,

from time to time, of a certificate from the trustee or trustees in the said existing mortgages, or the sworn statement of the president or treasurer of the railway company, that the railway company has paid to the said trustee or trustees, or to the London and San Francisco Bank (limited), London, or to the Messrs. Drexel, Morgan & Co., New York, or the successors of either of them, a specified amount of money, to be applied under said existing bridge mortgages to the funding and retiring of bonds secured thereby, whereupon the trustee in this indenture shall, from time to time, certify and deliver to the railway company bonds secured hereby, not exceeding the amount specified above, to the par amount of the said specified amount of money so paid as aforesaid to said trustee or trustees of the existing bridge mortgages, or to the said bank, or to said Drexel, Morgan & Co., or the successors of either of them, and the trustee hereof is not bound to look beyond said certificate of the trustee or trustees of the existing mortgage, or a resolution of the railway company, verified by the oath of its president or treasurer, stating that it has made payment of a specified amount of money to said last named trustee or trustees, or to said London and San Francisco Bank (limited), London, or to Messrs. Drexel, Morgan & Co., New York, or to the successors of either of them; the first certification of bonds hereunder, to the extent of one hundred and two thousand dollars, to be made by the trustee without further corporate act on the part of said railway company, or certificate, or sworn statement as required for other certifications; and thereafter bonds are to be certified by the trustee from time to time, as above specified and provided.

The said railway company hereby covenants and agrees that it will pay to the trustee herein on the first day of March, 1897, and on the same day each year thereafter, until the bonds secured hereby are paid, a sufficient sum of money to provide for a sinking fund, to be composed of a fixed sum of forty-four thousand dollars gold coin of the United States, which sinking fund is to be annually applied by the trustee in the purchase and redemption of bonds as herein set forth.

If bonds secured hereby sufficient in amount to exhaust the cash in the hands of the trustee, cannot be bought in open market by said trustee at a price not exceeding

five per cent above their par value and interest, then said trustee shall invest any and all moneys thus received, and all accumulations and income thereof, in the purchase of any of the bonds of the Union Pacific Railway Company, or in the purchase of the bonds of any railroad now constructed, or hereafter to be constructed, which connects with the road known as the Union Pacific Railroad (extending from Council Bluffs, Kansas City, and Leavenworth on the east, to Ogden and Denver on the west, and from Denver to Cheyenne), or of the first mortgage bonds of any branches or extensions thereof, or of connecting railroads, now existing or hereafter to be constructed or acquired, and of which road so connecting therewith the Union Pacific Railway Company is the owner or the lessee, or owns the majority of the capital stock thereof; and if no satisfactory bonds of any of the foregoing descriptions can be purchased on terms which will yield or pay interest on the amount necessary to be invested therein at the rate of at least four per cent per annum, then the trustee in this indenture may purchase other first mortgage bonds of any other railroad companies, or state, territorial, county, precinct, township, or city bonds, which will yield or pay interest at the rate last mentioned.

ARTICLE 2. If the said railway company shall pay the bonds, principal and interest, secured hereby, at the times and in the manner aforesaid, and keep the covenants herein on its part, this indenture shall be satisfied and discharged of record.

ARTICLE 3. Until default be made by the railway company as herein provided, it shall be entitled to the possession, use and operation of the said bridge, and to receive the rents, earnings, incomes and profits thereof; provided, however, that in case default be made by said railway company in the payment of the interest or principal of the existing bridge bonds, or in respect to the sinking fund requirements of the existing bridge mortgages, or in any covenant or condition therein contained, or in the payment of interest upon the bonds secured hereby, or in respect of the sinking fund provisions herein contained or in the payment of the principal of the bond themselves, or in any covenant or condition herein contained, and such default shall continue for three months after written demand for performance made upon the

company by the trustee or any of the bondholders secured hereby, then and in either and every such case said trustee is entitled to take possession of the property hereby mortgaged, operate said bridge and fix the tolls, rates and charges thereon for the use thereof, to receive the rents, earnings, incomes, and profits thereof, and to make all necessary repairs, and to receive just and reasonable compensation for its services, and to apply the net tolls, income and revenue of said bridge to the payment of the interest in arrear, or which shall fall due on the outstanding bonds secured hereby in the order in which such interest shall have become due, ratably, and after paying all such interest which shall have become due, to apply the same to the satisfaction of the principal of the aforesaid bonds which may be at the time due and unpaid, if the principal shall have become due and payable as herein provided, ratably.

ARTICLE 4. So long as the security hereby created shall subsist, the company will insure and keep insured in the name of the said trustee for the benefit and protection of the holders of the bonds secured hereby, the depots and buildings connected with the said bridge, against loss or damage by fire; and the proceeds of such insurance shall be applied, under the direction of the trustee, in restoring the property to its condition at the time of the injury. And the railway company covenants to restore such property to its condition at the time of the injury, and to furnish all moneys necessary to said end, over and above the proceeds of such insurance. And the railway company also covenants to maintain and preserve said bridge and mortgaged property in good order and condition.

ARTICLE 5. If default shall be made as provided in article three (3) hereof, and such default shall continue for three months after demand made in writing as aforesaid, said trustee *may*, and at the request of the holders of one-fourth in amount of the bonds issued hereunder and then outstanding, and upon being sufficiently indemnified, *shall* declare the principal sum to be due, and thereupon the principal of all the bonds secured by this indenture shall be immediately due and payable, anything contained in the bonds, or herein, to the contrary notwithstanding; and with or without entry as it may deem best,

shall cause the said bridge, and lines, and all other property, matters, and things hereinbefore expressed to be conveyed, to be sold by public auction in the City of Council Bluffs, Iowa, giving ninety days' notice of the time, place and terms of sale, once in each week in one or more papers published in the City of New York, and upon such sale shall execute to the purchaser or purchasers, deeds, releases, transfers and conveyances of the property, estates, rights and securities thus sold, and shall apply the proceeds of such sale, together with all moneys in its hands which shall be received under or by virtue of these presents, after deducting all expenses incurred in the execution of the trusts and powers hereby created, first to the payment of all interest coupons of said bonds at the time remaining due and unpaid, in the order in which the same shall have become due, ratably to the persons entitled thereto, and thereafter to the payment of the principal of said bonds equally and without preference, whether the same shall have become due or not, and shall pay over the surplus (if any) to the said railway company; or at its election proceed to foreclose this mortgage by a suit or suits in equity, or at law, or otherwise, as it, the trustee, being advised by counsel learned in the law, shall deem most effectual to ensure such rights, the proceeds of sale thereunder being applied in the manner last above provided. It being understood, and it is hereby expressly declared, that the rights of entry and sale hereinbefore granted are intended as cumulative remedies, additional to all other remedies allowed by law, and that the same shall not be deemed, in any manner whatsoever, to deprive the trustee or the beneficiaries under this trust, of any legal or equitable remedy by judicial proceedings, according to the true intent and meaning hereof.

*Provided always*, and it is hereby expressly declared and agreed, that no holder of a bond or of any bonds secured hereby, shall have the right to institute any suit, action, or proceeding, in equity or at law, for the foreclosure of this indenture, or for the execution of the trusts hereof, or for the appointment of a receiver or any other action, suit or remedy hereunder, without first giving notice in writing to the trustee of default having occurred and continued, as in this article aforesaid, and requesting the trustee, and affording it a reasonable opportunity, to

institute such action, suit or proceeding in its own nam
or to proceed to exercise the powers hereinbefore grante
and also offering to it adequate security and indemni
against the costs, expenses and liabilities to be incurr
therein or thereby; and such notification, request and off
of indemnity are hereby declared to be conditions precede
to any suit or action, or right of suit or action by any hold
of a bond or of any bonds secured hereby for the for
closure, or for the execution of the trusts of this indentur
or for the appointment of a receiver, and to any other actio
suit or remedy hereunder.

And it is hereby provided, declared and agreed tha
in case any sale shall be made of the said mortgaged estat
chattels real, interests, estates, appurtenances, fixture
equipments, property, lands, rights, privileges, inmmuitie
or franchises, either by the exercise of the powers granted i
this article of this instrument, or pursuant to or under
judicial decree or judgment of a Court, the purchaser
purchasers at said sale or sales shall be entitled in makin
settlement for and payment of the purchase money, t
deliver to the trustee, or in case of a judicial sale, to th
person or persons legally appointed and qualified to re
ceive the payment of such purchase money, and to turn i
and use any of the bonds or coupons secured by thes
presents, in or towards the payment of said purchas
money; reckoning and computing said bonds or coupon
at a sum equal to, and not exceeding, that which shall b
payable out of the net proceeds of said sale, to the purchase
or purchasers, as the holder or holders of said bonds o
coupons, for his or their just share and proportion in tha
character, of said net proceeds, upon a due accounting con
cerning, and apportionment and distribution of, the sai
net proceeds.

And the railway company further agrees, that if any
default be made in the covenants, agreements and pro
visions herein contained, or in said existing mortgages con
tained, a degree for specific performance, in addition to
any other right or remedy therefor, and not in exclusion
thereof, may be obtained; and pending the application
thereof, and also pending any other proceedings by the
trustee to enforce the rights of the trustee and the bond
holders under these presents, or to forclose this mortgage,
one or more receivers of such premises, franchises and prop-

erty, and of the earnings, profits and income thereof, shall in the discretion of the trustee be appointed, and such other and further or equitable relief shall be had as shall be proper and adequate in the premises.

Article 6. If any such sale shall be made as provided in Article 5, or by virtue of any judicial decree of foreclosure, the company shall thereafter in perpetuity be bound to pass all the passengers and freight of the said railway company passing across the Missouri over the said bridge and lines, and not to avail itself of or use any bridge or ferry across the Missouri, now or hereafter existing within twenty miles of a straight line above or below the said bridge hereinbefore mentioned, and will pay as a first transportation lien upon such traffic such tolls as shall from time to time be lawfully charged by the purchasers of the said bridge and lines in respect of goods and passengers passing over or using the same.

Notwithstanding any such sale, the said railway company shall remain bound to pay all the bond-holders so much of the principal and interest of their bonds, if any, as shall not have been paid out of the proceeds of such sale.

Article 7. The said railway company hereby covenants and agrees to well and truly pay, in gold coin of the United States of America, of the present standard of weight and fineness, the said bonds hereby secured, when and as the same shall become due and payable; and likewise will well and truly pay all the interest which shall from time to time become due and payable upon said bonds when and as the same shall become due and payable.

Article 8. The said railway company further hereby covenants and agrees with the said trustee, and each bond-holder secured hereby, that as said existing bonds are redeemed or paid, either out of the proceeds of the bonds issued hereunder, or the other resources of said company, the trustee and the holders of the bonds issued under this indenture shall be, and they are subrogated to all the rights, liens and equities which pertained to the bonds so paid and satisfied, whether the same arise under this indenture, the said existing mortgage, acts of Congress, acts of the company or otherwise, and that such bonds shall be turned over to the trustee hereunder, for the further security and protection of the holders of bonds secured hereby.

Article 9. The said railway company covenants and

agrees at all times hereafter to pay all taxes and assessments, whether federal, state, county or municipal, which are, or may hereafter be assessed or imposed against the said premises hereinbefore granted, or intended so to be, and all federal, state, county, or municipal taxes or charges which may be imposed upon, or be required by law to be deducted by said company or the bondholders, either from the principal or interest of said bonds, at the time or times when the said taxes or assessments may be respectively due and payable; and does also agree to waive, and hereby irrevocably waives, all benefit or advantages of any valuation, stay, appraisement, redemption or extension laws, now existing, or which may hereafter be passed, which but for this provision, agreement and waiver might be availed of to prevent or postpone the absolute and immediate sale of said premises, under the provisions herein contained, or by judicial authority; and agrees that it will not set up or seek to take the benefit or advantage of the same.

ARTICLE 10. The said railway company further covenants and agrees that it shall and will at all times hereafter, upon the reasonable request of the trustee, make, execute, acknowledge and deliver all such further deeds, conveyances, assignments and assurances in the law for the better assuring to the trustee upon the trusts and for the purposes herein expressed or intended, the said premises and property hereby mortgaged or conveyed in trust, or intended so to be whether now owned or possessed by or vested in the said railway company, or subsequently shall be acquired by or vested in it relating thereto, including all franchises now held or that shall be hereafter acquired relating thereto.

ARTICLE 11. The trustee herein appointed may be removed by a court of competent jurisdiction upon the application of a majority in interest of the holders of the outstanding bonds secured hereby, without cause, and upon the application of a less number for cause. In case of any vacancy in said trust by reason of removal, resignation or otherwise, a successor may be appointed by the holders of a majority in interest of all the bonds secured hereby and then outstanding, excluding for this purpose all bonds held by said railway company, directly or indirectly, by instrument or instruments in writing under their hands and seals, and thereupon such successor shall succeed to and shall

possess and exercise all the rights, duties, and powers herein conferred or imposed upon the party hereto of the second part.

ARTICLE 12. The word "trustee" used herein is intended to mean the party of the second part hereto, or any successor trustee, and any successor trustee shall be possessed of and exercise all the powers and duties granted and created by these presents.

ARTICLE 13. The said party of the second part hereby accepts the trusts created by these presents and agrees to execute the same to the best of its ability. In the execution of its trusts, the trustee shall not be answerable except for willful default or gross negligence, and shall be entitled to reasonable compensation for the discharge of its duty, and to be reimbursed for all costs and expenditures reasonably incurred by it in the execution of its trusts.

*In witness whereof*, the said railway company, party of the first part, has caused this instrument to be signed by its President and its corporate seal to be hereunto attached, attested by its Secretary; and the said trustee, party of the second part, has hereunto set its seal, and caused the same to be attested and this instrument to be signed by its proper officers, the day and year first above written.

The Union Pacific Railway Company,
By C. F. ADAMS,
President.

[SEAL]
Attest: HENRY MCFARLAND,
Secretary.

The Central Trust Company of New York,
By F. P. OLCOTT,
President.

[SEAL]
Attest: C. H. P. BABCOCK,
Secretary.

STATE OF MASSACHUSETTS, }
COUNTY OF SUFFOLK. } ss.

Be it remembered, that on this second day of May, 1887, personally appeared before me, a Notary Public in and for said county and State, Charles F. Adams, to me personally known, and known to me to be the President of the Union Pacific Railway Company, and said Adams then and there acknowledged that he executed the foregoing

mortgage or deed of trust for and on behalf of the said Union Pacific Railway Company, and as its voluntary act and deed, for the uses, purposes, and considerations therein stated, and that the seal attached to said instrument is the corporate seal of said railway company, and that said seal was so attached thereto, and he signed said instrument, by order of the board of directors of said railway company.

*In witness whereof*, I have hereunto set my hand and affixed my official seal the day and year first above written.

JAMES G. HARRIS,
Notary Public.

[SEAL]

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK. } ss.

Be it remembered, that on this twenty-fifth day of May, 1887, personally appeared before me, a Notary Public in and for said county and State, F. P. Olcott, to me personally known and known to me to be the President of the Central Trust Company, and said Olcott then and there acknowledged that he executed the foregoing mortgage or deed of trust for and on behalf of the said Central Trust Company, and as its voluntary act and deed, for the uses, purposes, and considerations therein stated, and that the seal attached to said instrument is the corporate seal of said Trust Company, and that the said seal was so attached thereto, and he signed said instrument by order of the board of directors of said trust company.

*In witness whereof*, I have hereunto set my hand and official seal, the day and year first above written.

HERBERT M. HYDE,
Notary Public,
New York City and County.

[SEAL]

STATE OF IOWA,
POTTAWATTAMIE CO. } ss.

Filed for record the 28th day of May, A. D. 1887, at 1½ o'clock p. m. and recorded in Book 199 Page 390 of county records.

W. H. THOMAS,
Recorder.

Received for record this 20th day of May, A. D. 1887, at 4.30 o'clock p. m. and recorded in Book 63 of Mortgages at page 273.

C. P. NEEDHAM,
County Clerk,
Douglas County, Neb.

S. S. AUCHMOEDY,
Deputy.

96. That said mortgage was duly recorded in the office of the recorder of Pottawattamie County, state of Iowa, and was also duly recorded in the office of the county clerk of Douglas County, State of Nebraska, on the days as certified thereon.

97. That at the date of said mortgage, namely, October 1, 1885, there were outstanding and unpaid of the bonds which had been issued under the Omaha Bridge Mortgage of April 1, 1871, the principal amount of $1,621,000.

98. That said railway company, in compliance with the provisions of said Omaha Bridge Mortgage of April 1, 1871, paid to the trustees of said mortgage from time to time, sums as required by the terms of said mortgage, for the purpose of paying and canceling bonds issued thereunder, and that such bonds were from time to time paid and canceled under the terms of said mortgage and in accordance therewith; and as such bonds were paid and canceled certificates of such payment were duly made and furnished to said Central Trust Company as trustee under said Bridge Renewal Mortgage; and that thereupon said railway company executed and said trustee certified the bonds of said railway company under the provisions of said Bridge Renewal Mortgage in the form as therein provided to the amount of the principal amount of the bonds secured by said original Omaha Bridge Mortgage of April 1, 1871, so certified as having been paid and canceled; and that thereupon such bonds so made, issued and certified under said Bridge Renewal Mortgage were delivered to said railway company.

99. That there were so executed, certified, issued and delivered to said railway company of such renewal bonds:

| | | | |
|---|---|---|---|
| $102,000 | thereof | on account of said original Omaha Bridge Bonds paid April 1, 1886. | |
| 109,000 | do. | do. | 1887 |
| 117,000 | do. | do. | 1888 |
| 126,000 | do. | do. | 1889 |
| 135,000 | do. | do. | 1890 |
| 145,000 | do. | do. | 1891 |
| 155,000 | do. | do. | 1892 |
| 167,000 | do. | do. | 1893 |
| In all, $1,056,000 | | | |

100. That of said bonds so issued and certified under the terms and provisions of said Omaha Bridge Renewal Mortgage, $589,000 thereof, being the bonds which were delivered to said railway company as for said original bonds paid as above stated from April 1, 1886, to April 1, 1890, inclusive, were sold by said railway company from time to time, and the proceeds of said sales were paid into the general treasury of the railway company.

101. That of said bonds so issued $145,000 thereof issued as for said original bonds paid April 1, 1891, were, by said railway company, on September 4, 1891, pledged with Drexel, Morgan & Company, as trustees under the Trust Indenture of the Union Pacific Railway Company of September 4, 1891, and were then delivered by said railway company to said trustees, and are still held by said trustees under said trust indenture.

102. That of said bonds the amounts of $155,000 issued on account of original bonds paid April 1, 1892, and $167,000 issued on account of original bonds paid April 1, 1893, remained undisposed of by said railway company on October 13, 1893, and that said bonds then passed to the possession of the Receivers in said Ames cause hereinbefore referred to, as the property of the said railway company, and that they have not been sold or pledged by said railway company, or its Receivers.

103. That none of said bonds issued under said Omaha Bridge Renewal Mortgage have been paid or canceled.

104. That there has been paid upon said bonds the interest thereon to and including the instalment of interest which fell due on the first day of October, 1894, except that

the interest coupons which by their terms fell due on October 1, 1893, on the 322 bonds which were then in the possession of said railway company undisposed of, have been, under the direction of the court in said Ames cause, canceled unpaid.

105. That no interest has been paid on said bonds since the installment which matured on October 1, 1894, and that no payments have been made on account of the sinking fund requirements contained in said mortgage, provided to commence on the first day of March, 1897.

106. That the amount of principal and interest owing upon said bonds on the first day of April, 1897, is as follows:

| | |
|---|---|
| Principal amount of bonds sold and disposed of by said railway company | $734,000 |
| Interest thereon from October 1, 1894, to April 1, 1897 | 91,750 |
| Total | $825,750 |

107. That said bonds issued under the said Omaha Bridge Renewal Mortgage of 1885, and now outstanding, have no lien or other security for the payment thereof except the lien of said mortgage upon the property therein described.

EQUIPMENT TRUST.

108. That the Union Pacific Railway Company made and delivered its trust indenture, dated October 1, 1887, to the American Loan and Trust Company, of Boston, as Trustee, whereby it was, among other things, agreed that to enable said The Union Pacific Railway Company to purchase cars and engines for use upon its lines of railway and to pay for the same, the cars and engines so to be purchased should be transferred to and vested in said trustees under said indenture by the several parties from whom the same should be purchased, so that said trustee and its successors and assigns should stand possessed of said cars and engines until payment of the principal and interest of the bonds issued in respect thereto should be made by said railway company under and in accordance with the provisions and requirements of said trust indenture, permitting said railway company to use and enjoy said cars and engines until default should be made in the payment of its obligations under said trust indenture and the bonds secured thereby.

109. That under said trust indenture said railway company made and issued its certain bonds, each in the sum of one thousand dollars ($1,000 ) bearing interest at the rate of five per cent. per annum, which interest was payable semi-annually and evidenced by coupons attached to said bonds, and that such bonds were so issued in three series, namely, A, B and C.

Of which the Series A bonds, in number seven hundred sixteen, and in amount seven hundred sixteen thousand dollars ($716,000), were dated October 1, 1887, and were, under the terms of said trust agreement, secured by the equipment purchased with the proceeds thereof, and described as

10 first-class coaches,
4 suburban coaches,
6 mail, baggage and express cars,
200 stock cars,
24 emigrant sleepers,
2 combination passenger and baggage cars,
6 baggage cars,
100 furniture cars,
50 refrigerator cars,
30 passenger locomotives,
10 Wooten locomotives.

And of which Series B bonds, in number from seven hundred seventeen to two thousand eight hundred twenty (717 to 2820), both inclusive, and in amount two million one hundred four thousand dollars($2,104,000), were dated April 1, 1888, and were under the terms of said trust agreement secured by the equipment purchased with the proceeds thereof, and described as

10 emigrant sleepers,
6 baggage cars,
50 passenger refrigerator cars,
600 furniture cars,
611 coal cars.
20 chair cars,
83 stock cars,
250 refrigerator cars,
1009 box cars,
27 cabooses,
100 Blaine dump cars,
75 eight-wheel locomotives,

And of which Series C bonds, in number eight hundred ten (810) and in amount eight hundred ten thousand dollars ($810,000) were dated April 1, 1890, and were, under the terms of said trust agreement secured by the equipment purchased with the proceeds thereof and described as:

24 caboose cars,
100 passenger fruit cars,
400 freight fruit cars,
23 ten-wheel locomotives,
3 eight-wheel locomotives,
19 six-wheel locomotives,
1 steam derrick car,
3 chair cars,
3 baggage cars.

110. That all of said Series A bonds issued in respect to the equipment above described as Series A equipment have been paid, with interest thereon, except the amount of seventy-two thousand dollars ($72,000), with interest upon said amount from the first day of April, 1897; that the principal of said bonds will fall due on October 1, 1897.

111. That all of said Series B bonds issued in respect to the equipment above described as Series B equipment have been paid, with the interest thereon, except the amount of two hundred ten thousand dollars ($210,000), with interest thereon from April 1, 1897; that the principal of said bonds will fall due April 1, 1898.

112. That all of said Series C bonds issued in respect to the equipment above described as Series C equipment, have been paid, with interest thereon, except the amount of two hundred twenty-five thousand dollars ($225,000), with interest thereon from April 1, 1897; that seventy-six thousand dollars ($76,000) of the principal of said bonds will fall due April 1, 1898; that seventy-five thousand dollars ($75,000) of the principal of said bonds will fall due April 1, 1899; that seventy-four thousand dollars ($74,000) of the principal of said bonds will fall due April 1, 1900.

113. That said Union Pacific Railway Company entered into an agreement with said American Loan and Trust Company, as trustee under said equipment trust indenture, dated February 1, 1893, recognizing and affirming said equipment trust indenture of October 1, 1887, as to the amounts of principal and interest upon the bonds secured

thereby then remaining unpaid, and in respect to the equipment then existing upon which such bonds were secured in said three several series as described in said original trust indenture.

114. That certain of said equipment in said three several series has been heretofore worn out and destroyed, but that such of said equipment as remains is subject to the terms of said indenture and the obligations of the Union Pacific Railway Company to said American Loan and Trust Company, as trustee as aforesaid, thereunder in respect thereto.

OMAHA BRIDGE DIVISION PROPERTY.

115. That the property which is embraced in and appertains to said Omaha Bridge Division of the Union Pacific Railway is described as follows, to-wit:

The railroad and railroad property extending from the eastern terminus of the said Union Pacific Railway on the east line of the said railway company's property, between Twelfth Avenue and Thirteenth Avenue in Council Bluffs, Iowa, in a westerly direction, to a junction with the Union Division of the Union Pacific Railway at Twentieth Street in Omaha, Nebraska, including the bridge across the Missouri River and the right of way and double-track railroad thereon, between said eastern terminus and said point of junction with said Union Division, constituting the main line of said railroad between said points, a distance of three and ninety-eight one-hundredths (3.98) miles.

116. Also the right of way and railroad track constituting a branch line of railroad extending from a point of junction with the said main line of said Omaha Bridge Division at a point about six-tenths (.6) of a mile west of what is known as the transfer depot at Council Bluffs, in a northeasterly direction, to what is known as the Broadway Depot in said City, a distance of one and seventy-two one-hundredths (1.72) miles in said city of Council Bluffs, and upon and across the streets thereof.

117. Also switches, turnouts, sidings, and spur tracks aggregating in amount about 24.5 miles of track in said Council Bluffs, and about 12¼ miles in said Omaha.

118. Also lots yards, terminal and station and other grounds acquired or appropriated for the purpose of said railroad aggregating in area about 1,027 acres of land in

Council Bluffs and about 42¾ acres of land in said Omaha, including certain lands the record title to which stands in the name of certain trustees for the Union Pacific Railway Company, as hereinafter more fully stated.

119. Also all the tools, appliances, furniture, fixtures, supplies, materials, rolling stock and equipments located on the premises of said Omaha Bridge Division, or acquired or provided for use in connection therewith.

120. Also all structures upon said premises, including the Broadway Depot, the Transfer Depot, freight houses, round houses, machine shops, coal chutes, store houses and other structures and facilities constructed or acquired for or used for the purposes of or in connection with, the said railway property.

121. Also the rights of way of said railway included in said Omaha Bridge Division thereof, and of its switches, turnouts, sidings and spur tracks, together with easements over streets and alleys crossed thereby in said Council Bluffs and said Omaha.

122. Also the lines of telegraph, the telegraph material, instruments, fixtures and appliances belonging to said railway company located upon or pertaining to said Omaha Bridge Division thereof.

123. Also all furniture, fixtures, appliances, apparatus, supplies and material in the various offices of said railway company upon or remote from said line of railroad, including the principal offices of said company at Omaha, Nebraska, and Boston, Massachusetts, owned, acquired or provided for use in connection with said Omaha Bridge Division of said railway property.

124. Also the rights and property of the character as above described owned or provided for the common use of the several divisions of said railway company's property to the extent of the proportionate use and devotion thereof to the business and concerns of the said Omaha Bridge Division of said railway company's property.

125. Also the rights and interests of said Union Pacific Railway Company in or to property of every kind and nature, whether of the character as herein described or otherwise, owned, acquired or provided for the use of said Omaha Bridge Division of its said railway property.

126. Also the corporate rights and franchises of said

Union Pacific Railway Company so far as they pertain to said Omaha Bridge Division thereof.

127. Also the moneys, credits and property not herein otherwise specified, in the possession of the Receivers or to which they are or may be entitled which have been or may be derived by said Receivers from or on account of the property of the Union Pacific Railway Company, pertaining to said Omaha Bridge Division thereof, or from the sale or other disposition of any of said property or from the use of the same or from the operation thereof by said Receivers, subject to the charges of said Receivers, in respect thereto.

128. That the following schedule marked "Schedule 1" is a more particular description of a portion of the property above described as included in the Omaha Bridge Division of said railway:

## SCHEDULE 1.

DESCRIPTION OF PROPERTY OF THE UNION PACIFIC RAILWAY COMPANY INCLUDING RIGHT OF WAY, STATION GROUNDS, TRACKS AND STRUCTURES.

## BRIDGE DIVISION.

MAIN LINE: Extending from Eastern Terminus on East line of Company's property, Council Bluffs, Ia., in a Westerly direction to Bridge Junction at 20th Street, Omaha, Neb. . . . . 3.98 miles

BRANCH LINE: Extending from junction with Main Line at a point about 0.60 mile west of the transfer depot, Council Bluffs, in Northeasterly direction to Broadway Depot . . . . . 1.72 "

Total Mileage Main track . . . . . 5.70 "
Mileage Second main Track . . . . . 3.92 "

# RIGHT OF WAY AND STATION GROUNDS.

*City of Council Bluffs, Pottawattamie County, Iowa.*

| Location | Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|---|
| Grimes' Addn.... | 9 | 1 | Part | 3,894 | |
| | | 2 | " | 7,570 | |
| | | 3 | All | 8,620 | |
| | | 4 | " | 8,620 | |
| | | 5 | " | 8,620 | |
| | | 6 | Part | 10,540 | |
| | | 7 | " | 944 | 49,808 |
| Bayliss' 2d Addn . | 13 | 1 | " | 9,810 | |
| | | 2 | " | 6,468 | |
| | | 3 | " | 2,840 | |
| | | 4 | " | 1,130 | |
| | | 5 | " | 4,620 | 24,868 |
| Brown's Sub Div. | 9 | 1 | All | 3,520 | |
| | | 2 | " | 3,520 | |
| | | 3 | " | 3,520 | 10,560 |
| | 10 | 1 | " | 5,478 | |
| | | 2 | " | 5,478 | |
| | | 3 | " | 5,478 | 16,434 |
| | 11 | 1 | " | 6,028 | |
| | | 2 | " | 6,028 | |
| | | 3 | " | 6,028 | 18,084 |
| | 16 | 1 | " | 6,028 | |
| | | 2 | " | 6,028 | |
| | | 3 | " | 6,028 | |
| | | 4 | " | 6,028 | |
| | | 5 | " | 6,028 | |
| | | 6 | " | 6,028 | |
| | | 7 | " | 6,028 | |
| | | 8 | " | 6,028 | |
| | | 9 | " | 6,028 | |
| | | 10 | " | 6,028 | |
| | | 11 | " | 6,028 | |
| | | 12 | " | 6,028 | |
| | | 13 | " | 6,028 | |
| | | 14 | " | 6,028 | |
| | | 15 | " | 6,028 | |
| | 17 | 1 | " | 5,478 | |

| Location | Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|---|
| | | 2 | All | 5,478 | |
| | | 3 | " | 5,478 | |
| | | 4 | " | 5,478 | |
| | | 5 | " | 5,478 | |
| | | 6 | " | 5,478 | |
| | | 7 | " | 5,478 | |
| | | 8 | " | 5,478 | |
| | | 9 | " | 5,478 | |
| | | 10 | " | 5,478 | |
| | | 11 | " | 5,478 | |
| | | 12 | " | 5,478 | |
| | | 13 | " | 5,478 | |
| | | 14 | " | 5,478 | |
| | | 15 | " | 5,478 | 82,170 |
| | 18 | 1 | " | 3,520 | |
| | | 2 | " | 3,520 | |
| | | 3 | " | 3,520 | |
| | | 4 | " | 3,520 | |
| | | 5 | " | 3,520 | |
| | | 6 | " | 3,520 | |
| | | 7 | " | 3,520 | |
| | | 8 | " | 3,520 | |
| | | 9 | " | 3,520 | |
| | | 10 | " | 3,520 | |
| | | 11 | " | 3,520 | |
| | | 12 | " | 3,520 | |
| | | 13 | " | 3,520 | |
| | | 14 | " | 3,520 | |
| | | 15 | " | 3,520 | 52,800 |
| | 35 | 1 | " | 6,424 | |
| | | 2 | " | 5,110 | 11,534 |
| | 36 | 1 | " | 5,478 | |
| | | 2 | " | 4,357½ | 9,835½ |
| | 37 | 1 | " | 6,028 | |
| | | 2 | " | 6,028 | |
| | | 3 | " | 6,028 | |
| | | 4 | " | 6,028 | |
| | | 5 | " | 6,028 | |
| | | 6 | " | 6,028 | |
| | | 7 | " | 6,028 | |

| Location | Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|---|
| | | 8 | All | 6,028 | |
| | | 9 | " | 6,028 | |
| | | 10 | " | 6,028 | |
| | | 11 | " | 6,028 | |
| | | 12 | " | 6,028 | |
| | | 13 | " | 6,028 | |
| | | 14 | " | 6,028 | |
| | | 15 | " | 6,028 | 90,420 |
| Riddle's Sub Div . | 11 | 1 | " | 5,077⅓ | |
| | | 2 | " | 5,077⅓ | |
| | | 3 | " | 5,077⅓ | |
| | | 14 | Part | 3,957⅓ | |
| | | 15 | All | 5,077⅓ | |
| | | 16 | " | 5,077⅓ | |
| | | 17 | " | 5,040 | |
| | | 18 | " | 5,040 | |
| | | 19 | " | 5,040 | |
| | | 20 | " | 5,040 | 49,504 |
| | 12 | 1 | " | 5,077⅓ | |
| | | 2 | " | 5,077⅓ | |
| | | 3 | Part | 2,538⅔ | |
| | | 8 | " | 5,100 | |
| | | 9 | All | 5,077⅓ | |
| | | 10 | " | 5,077⅓ | |
| | | 11 | Part | 2,538⅔ | 30,486⅔ |
| | 33 | 1 | All | 5,440 | |
| | | 2 | " | 5,440 | |
| | | 3 | " | 5,440 | |
| | | 12 | " | 5,440 | |
| | | 13 | " | 5,440 | |
| | | 14 | " | 5,440 | |
| | | 15 | " | 4,488 | |
| | | 16 | " | 4,488 | 41,616 |
| | 34 | 1 | " | 5,440 | |
| | | 2 | " | 5,440 | |
| | | 3 | " | 5,440 | |
| | | 12 | " | 5,440 | |
| | | 13 | " | 5,440 | |
| | | 14 | " | 5,440 | |
| | | 15 | " | 4,488 | |

| Location | Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|---|
| | | 16 | All | 4,448 | 41,616 |
| | 37 | 14 | " | 5,608 | 5,608 |
| | 38 | 1 | " | 5,440 | |
| | | 2 | " | 5,440 | |
| | | 3 | " | 5,440 | |
| | | 11 | " | 5,440 | |
| | | 12 | " | 5,440 | |
| | | 13 | " | 5,440 | |
| | | 14 | " | 5,440 | |
| | | 15 | " | 3,944 | |
| | | 16 | " | 3,944 | 45,968 |

| T. | R. | Sec. | Part of Section | Acres | Total Acres |
|---|---|---|---|---|---|
| 74 N | 44W | 2 | NW ¼ All-Credit Mobilier | 146.44 | |
| | | | SW ¼ NE ¼ All-Credit Mobilier ..... | 40.00 | |
| | | 3 | Entire Section. Credit Mobelier ..... | 604.66 | 791.10 |
| 75 | 44 | 33 | S ½ Pt. Right of Way... | 16.05 | |
| | | | S ½ Pt. Wagon Approach | 12.68 | |
| | | 34 | S ½ Pt. Right of Way... | 35.49 | |
| | | | SE ¼ Pt. Transfer grds. | 42.83 | |
| | | 35 | SW ¼ Pt. Transfer grounds ..... | 155.24 | 262.29 |

## City of Omaha, Douglas County, Nebraska.

| T. | R. | Sec. | Part of Section | Acres | Total Acres |
|---|---|---|---|---|---|
| 15 N | 13 E | 23 | Lot 4 part—Bridge approach | 0.87 | |
| | | | Lot 4 part—Bridge approach | 0.30 | |
| | | | Lot 4 part—Bridge approach | 0.30 | |
| | | | Lot 4 part—Bridge approach | 0.47 | |
| | | | Lot 4 part—Bridge approach | 0.61 | |
| | | | Lot 4 part—Bridge approach | 2.07 | |
| | | | Lot 4 part—Bridge approach | 2.21 | |
| | | | Lot 4 part—Bridge approach | 1.59 | |
| | | 22 | SE ¼ SW ¼ part—Rt. of Way | 0.23 | |
| | | 27 | NW ¼ — part Right of Way | 5.95 | |
| | | | NW ¼ — part extra R. O. W. | 0.29 | |

| Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|
| 200 | 7 | Part ..... | 247 | |
| | 8 | " ..... | 1980 | 2,227 |
| 201 | 5 | " ..... | 4620 | |
| | 6 | " ..... | 7260 | |
| | 7 | " ..... | 8531 | |
| | 8 | " ..... | 7590 | 28,001 |
| 202 | 4 | " ..... | 2772 | |
| | 5 | All ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 37,620 |
| 203 | 4 | Part ..... | 5808 | |
| | 5 | All ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | Part ..... | 3564 | 35,508 |
| 204 | 2 | " ..... | 1386 | |
| | 3 | " ..... | 2706 | |
| | 5 | All ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 38,940 |
| 205 | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | Part ..... | 2508 | 28,644 |
| 206 | 5 | All ..... | 8712 | |
| | 6 | " ..... | 8712 | 17,424 |
| 208 | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 60,984 |
| 215 | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |

| Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 7 | All | 8712 | 52,272 |
| 216 | 1 | Part | 3300 | |
| | 2 | " | 4620 | |
| | 3 | " | 5940 | |
| | 4 | All | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 57,420 |
| 217 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 218 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 219 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | Part | 3300 | |
| | 6 | " | 4620 | |
| | 7 | " | 5940 | |
| | 8 | " | 7260 | 55,968 |
| 220 | 1 | " | 3069 | |
| | 2 | " | 1287 | |
| | 3 | " | 45 | 4,401 |
| 223 | 1 | " | 3234 | |
| | 2 | " | 5280 | |
| | 3 | " | 7722 | |
| | 4 | All | 8712 | |
| | 5 | Part | 575 | 25,523 |

| Block | Lot | Part of Lot | Square Feet | Total Square Feet |
|---|---|---|---|---|
| 224 | 1 | Part | 2904 | |
| | 2 | " | 363 | |
| | 5 | " | 3465 | |
| | 6 | " | 6963 | |
| | 7 | All | 8712 | |
| | 8 | Part | 8415 | |
| 226 | 1 | " | 5478 | 30,822 |
| | 2 | " | 2178 | |
| | 3 | " | 44 | |
| | 5 | " | 5610 | |
| | 6 | " | 8393 | |
| | 7 | All | 8712 | |
| | 8 | Part | 6534 | |
| 227 | 3 | " | 1890 | 36,949 |
| | 4 | " | 5940 | |
| | 6 | All | 8712 | 16,542 |
| 228 | 4 | " | 8712 | 8,712 |
| 231 | 1 | " | 8712 | |
| | 2 | " | 8712 | 17,424 |
| 234 | 1 | Part | 6930 | |
| | 2 | " | 5610 | |
| | 3 | " | 4191 | |
| | 4 | " | 2706 | 19,437 |
| 235 | 1 | All | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | Part | 660 | |
| | 6 | " | 2310 | |
| | 7 | " | 4455 | |
| | 8 | " | 4170 | 46,443 |
| 236 | 2 | All | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | 52,272 |
| 255 | 3 | Part | 2006 | |
| | 4 | " | 7531 | 9,537 |

| Street | Part or Street | Square Feet | Total Feet |
|---|---|---|---|
| Mason | East of 6th | 22,300 | |
| " | Bet. 6th & 7th | 30,175 | |
| " | " 7th & 8th | 30,175 | |
| " | " 8th & 9th | 20,035 | 102,685 |
| Marcy | " 7th & 8th | 18,134 | |
| " | " 8th & 9th | 31,400 | |
| " | " 9th & 10th | 28,900 | 78,434 |
| Sixth | " Pacific & Mason | 30,900 | |
| " | " Mason & Marcy | 22,430 | |
| " | " Marcy & Leavnwth | 5,280 | 58,610 |
| Seventh | " Pacific & Mason | 4,190 | |
| " | " Mason & Marcy | 9,080 | 13,270 |
| Eighth | South of Mason | 3,875 | |
| " | Bet. Mason & Marcy | 33,400 | |
| " | " Marcy & Leavnwth | 3,708 | 40,938 |
| Ninth | " Mason & Marcy | 32,040 | |
| " | " Marcy & Leavnwth | 15,000 | 47,040 |
| Fourteenth | " Mason & Marcy | 6,504 | 6,504 |
| | Alleys in Block 202 | 5,280 | |
| | 204 | 4,394 | |
| | 215 | 3,960 | |
| | 216 | 5,280 | |
| | 217 | 5,280 | |
| | 218 | 5,280 | |
| | 219 | 5,280 | |
| | 235 | 5,280 | |
| | 236 | 3,960 | 43,994 |

## Bridge Division. Tracks and Structures.

*Rail in Main and Second Tracks.*

| | | |
|---|---|---|
| Steel rail weighing 52 lbs per yard | | 1.18 miles |
| " " " 56 " " " | | 0.16 " |
| " " " 60 " " " | | 1.38 " |
| " " " 67 " " " | | 5.41 " |
| " " " 70 " " " | | 0.07 " |
| " " " 75 " " " | | 1.42 " |

Council Bluffs—

24 M. 1304 ft. Side Tracks.

| | | |
|---|---|---|
| Depot (Broadway) | Brick | (30x45) (58x68) |
| Pass. depot & Hotel (Transfer) | Stn. & Brk | 60x209 |
| "L" Add | Brick | 40x120 |
| "L" Add | " | 40x169 |
| Bakery | " | 12x27 |
| Ice House | " | 12x25 |
| Store House | " | 24x60 |
| Ice House | Frame | 20x50 |
| Freight house | " | 20x124 |
| Addn | " | 16x88 |
| Addn | " | 16x65 |
| Addn | " | 10x12 |
| Boiler House | " | 40x50 |
| Freight shed | " | 24x842 |
| " " | " | 16x758 |
| Freight office | " | 12x40 |
| Track scale | " | 34 ft. |
| Tenement House | " | 20x30 |
| Addn | " | 12x14 |
| Tenement House | " | 20x30 |
| Addn | " | 12x14 |
| Tenement House | " | 20x30 |
| Addn | " | 12x14 |
| Tenement House | " | 20x30 |
| Addn | " | 12x14 |
| Tenement House | " | 20x30 |
| Addn | " | 12x14 |
| Tenement House | " | 20x30 |
| Addn | " | 12x14 |
| Car Rep. & Store House | " | 30x150 |
| Blacksmith shop | " | 16x28 |

| | | |
|---|---|---|
| Oil House | Brick | 20x29 |
| Boiler House | Stn. & Brk. | 20x40 |
| Coal House | Frame | 16x32 |
| " | " | 24x100 |
| " | " | 30x98 |
| Coal chute 32 Pockets | " | 16x40 |
| Office | " | 24x26 |
| Sand House | " | 88x132 |
| Stock Yards | | |
| 3 Stand pipes | | |
| Hose House | Frame | 14x16 |
| Freight House—10th Ave. Line | " | 40x110 |
| Track Scales | | 34 ft. |
| Lamp room | " | 12x24 |
| Tool room | " | 14x26 |
| Ice house | " | 33x93 |
| Ice House | Frame | 37x139 |
| Round House (20 Stalls) | Stn. & Brk. | |
| Turntable | | 60 ft. |

Omaha—

| | | |
|---|---|---|
| 12 M 1147 ft. Side Tracks. | | |
| Store House | Frame | 14x40 |
| Shed | " | 14x24 |
| Tenement House | " | 24x26 |
| Addn | " | 8x16 |
| Paint store house | " | 16x42 |
| Carpenter shop | " | 28x47 |
| Addn | " | 10x12 |
| Lime House | " | 14x30 |
| Ice House | " | 30x100 |
| Y'd Master's Office | " | 14x30 |
| Car Repairer's Hse | " | 20x50 |
| Carpenter shop | " | 40x110 |
| Lime House | " | 14x30 |
| Track Scales | " | 45 ft. |
| 1 Stand pipe—water from city mains | | |

129. That the following schedule, marked "Schedule 2," is a more particular description of a portion of the property above described, the record title of which stands in the names of trustees for the Union Pacific Railway Company, as thereon shown, which property is included in the property of the Omaha Bridge Division of said railway.

## SCHEDULE 2.

LIST OF PROPERTY UNION PACIFIC RAILWAY COMPANY, THE TITLE TO WHICH IS VESTED IN TRUSTEES, AS SHOWN BY THE RECORDS OF THE CHIEF ENGINGEER'S OFFICE, AND OF THE LAND DEPARTMENT, APRIL 17, 1897.

### BRIDGE DIVISION.

| Description. | Acres |
|---|---|
| POTTAWATOMIE COUNTY, IOWA. | |
| Commencing at a point 471.5 ft. South of the northeast corner of the NW ¼ of SE ¼ of Sec. 34, T. 75 N. R. 44 W. of the 5th P. M., thence (taking the 40 acre line for due north and south line) S 57 deg. 31 min. W. 369.23 ft.; thence West to a point 676.5 ft. south and 329.34 ft. east of the center of said Sec. 34; thence south parallel with the North and South center line of said Sec. 34,660 ft. to a point in the present North Right of Way line of the Union Pacific Ry. Co.; thence East on said R. O. W. line 913.16 ft.; thence Northeasterly 89 ft. to a point in 40 acre line 60 ft. more or less North of the SE corner of the NW ¼ of SE ¼ of said Sec. 34; thence North on said 40 acre line 795.3 feet to the place of beginning, containing an area of ..... | 15.42 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| A tract in the NE ¼ of SE ¼ of Sec. 34 T. 75 N. R. 44 W. of 5th P. M. of Iowa, described as follows: Commencing at a point 185.3 ft. South from the East quarter section corner of said Sec. 34, running thence south on Section line 389.2 ft. or to grounds as now owned by Union Pac. Railway Co.; thence Southwesterly on Northerly line of said grounds 1484 feet to West line of said NE ¼ of SE ¼ ; thence North on said line 1080 ft.; thence East 1323 feet or to place of beginning. | |
| Except tract sold to S. H. Finney, described as follows: Commencing at a point 537 feet south from the East ¼ Section corner of said Sec. 34 and running thence south 39½ ft. to Union Pacific Ry. | |

| Description. | Acres. |
|---|---|
| grounds; thence southwesterly on northerly line of said grounds 270¾ feet; thence N. 30 deg. W. 188¾ ft.; thence East 335 ft. to place of beginning, containing 0.737 of an acre hereby conveying to said Trustees ... | 21.56 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| SW ¼ of NE ¼ and NW ¼ of Sec. 2 and all Sec. 3, all in Township 74, Range 44 West ..... | 791.10 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| A tract of land in the NE ¼ of SE ¼ Sec. 34, T. 75 N. R. 44 W. in Pottawatomie Co., Iowa, described as follows: Commencing at a point 537 ft. south from the East ¼ Section corner of said section 34, and running thence south 39¼ feet to U. P. Ry. ground; thence southwesterly on northerly line of said grounds 270¾ feet; thence north 30 deg. West 188¾; thence East 335 feet to place of beginning, containing an area of ..... | 0.74 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| The East 44 feet of Lot 1; the East 44 feet and the west 22 feet of Lot 2, and all of lots 3 and 5, all in Block 9 in Grimes Addition to Council Bluffs ..... | 0.66 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Part of Lots 4 and 6 in Block 9 in Grimes Addition to Council Bluffs not in Union Avenue ..... | 0.44 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| That portion of Lot 7 in Block 9 in Grimes Addition to the City of Council Bluffs not taken and used for the Right of Way of "Union Avenue"..... | 0.02 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Part of Lots 1, 2, 3, 4, and 5, in Block 13, in Bayliss Addition to Council Bluffs not in Union Avenue ..... | 0.57 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| An undivided half of Lots 1, 2, and 3 in Block 11 in the Subdivision of Riddle Tract in the City of Council Bluffs. All the interest of J. S. Casement, Mary Lockwood Casement, Robert L. Casement, Grey Casement and | |

| Description. | Acres. |
|---|---|
| Daniel Wells Casement in and to Lots 1, 2 and 3 in Block 11 in Riddle's Sub-division of the City of Council Bluffs, Iowa ..... | 0.36 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All the North 35⅓ feet of Lot 14 and all of Lots 15 & 16 in Block 11; all in the Subdivision of the Riddle tract, City of Council Bluffs ..... | 0.32 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 17 in Block 11 in Sub-division of the Riddle tract, City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot No. 18 in Block 11 in Sub-division of Riddle tract, City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 19 in block 11 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 20 in Block 11 in the Sub-disivion of the Riddle tract in the City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 1, 2, 9, & 10 in Block 12; also the North 22⅔ ft. of Lot 3 in Block 12 and the North 22⅔ ft. of Lot 11 in Block 12 and the North 113⅓ ft. of lot 8 in Blk. 12; all in the sub-division of the Riddle tract of Council Bluffs..... | 0.70 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lot 1 in Block 33 in the Sub-division of the Riddle tract in the City of Council Bluffs. | |
| All of Lot No. 2 in Block No. 33 in Sub-division of the Riddle tract, City of Council Bluffs..... | |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lot 3 in Block 33 in Sub-division of the Riddle tract in the City of Council Bluffs..... | 0.25 |
| All of Lot 12 in Block 33, Riddle's Sub-division of the City of Council Bluffs ..... | 0.25 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 13 and 14 in Block 33 of. Sub-division of Riddle tract, City of Council Bluffs..... | 0.25 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| All of Lot 15, Block 33 in the Subdivision of Riddle tract, City of Council Bluffs ..... | |
| All Lot 16 in Block 33 in the Sub-division of the Riddle tract in the City of Council Bluffs..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 1 in Block 34 in Sub-division of the Riddle tract, City of Council Bluffs. | |
| Lot 2 and 3 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs..... | 0.37 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 12, 13 and 14 in Block 34 in Sub-division of Riddle tract, City of Council Bluffs ..... | 0.38 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 15 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.10 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lot 16 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.10 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 14 in the Block 37 in Sub-division of the Riddle tract, City of Council Bluffs ..... | 0.13 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 1, 2 & 3 in Block 38 in Sub-division of the Riddle tract, City of Council Bluffs ..... | 0.37 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lot 11 in Block 38 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lots 12, 13 & 14 in Block 38 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.37 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 15 in Block 38 in Sub-division of the Riddle tract, City of Council Bluffs ..... | |
| All of Lot 16 in Block 38 in Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.18 |
| DEXTER, ATKINS & LANE, TRUSTEES. | |

## DOUGLAS COUNTY, NEBRASKA.

### City of Omaha.

| Description. | Acres. |
|---|---|
| Lots 2 and 3 in Block 208 in the City of Omaha, as surveyed and lithographed subject to taxes thereon for the year 1886 ..... Atkins, Baker & McFarland, Trustees. | 0.40 |
| Lot 4 in Block 208 in the City of Omaha, as surveyed and platted ..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Lot 5 in Block 208 in the City of Omaha, as surveyed and platted ..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Lot 6 in Block 208 in the City of Omaha ..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Lot 2 in Block 215 in the City of Omaha..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Lot 3 in Block 215 in the City of Omaha..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Lot 4 in Block No. 215 in the City of Omaha, as surveyed and platted. Subject to the following leases, which have been this day assigned by the said Grantor to John R. Manchester, in trust for the Union Pacific Railway Co. and taxes of 1886.<br>Leases: From Jacob Pflug to Jacob Schlechter, dated Aug. 8, '83, for 4 y. 8 mo. from date.<br>From Jacob Pflug to Frederick Krause, dated July 16, 1880, for 5 y. from date and ext. 3 y.<br>From Jacob Pflug to Malcom Christensen dated Apr. 1, 1886, for 3 yrs. from date.<br>From Jacob Pflug to Joseph Schlechter, dated Apr. 2 1886, for 3 yrs from date.<br>From Jacob Pflug to Henry Brockner, dated April 1, 1886, for 3 yrs. from date.<br>From Jacob Pflug to Patrick Murphy, dated April 6, 1886, for 3 years from date..... Atkins, Baker & McFarland, Trustees. | 0.20 |

| Description. | Acres. |
|---|---|
| Part of Lot 2 (being 2,178 sq. ft.), in Block No. 226, in the City of Omaha, according to the recorded plat thereof ..... | |
| ATKINS, DEXTER & LANE, TRUSTEES. | |
| Commencing at a point 346 feet north of the SE corner of the SW ¼ of the SW ¼ of section 23 in T 15 N of R 13 E of the 6th P. M.; thence east 410 feet; thence south 88 ft.; thence west 240 ft.; thence north 56 ft.; thence west 170 ft.; thence north 32 feet to the place of beginning. Containing 26,560 square feet..... | 0.61 |
| ATKINS, BAKER & MCFARLAND TRUSTEES., | |

UNION DIVISION PROPERTY.

130. That the property which is embraced in, and appertains to, said Union Division of said Union Pacific Railway Company, is described as follows, to-wit:

The railroad, railroad right of way and railroad property extending from the initial point of construction of the Union Pacific Railroad, near the northeast corner of, and within, section 10, township 15, range 13, east of the 6th principal meridian, in Omaha, Nebraska, in a southerly and westerly direction through the City of Omaha to Twentieth Street in said city of Omaha, to a junction with the Omaha Bridge Division of the said railway (excepting, however, about 4,950 feet of track next southerly from said point of commencement which has heretofore been abandoned), thence in a westerly direction through the counties of Douglas, Sarpy, Dodge, Colfax, Platte, Merrick, Hall, Buffalo, Dawson, Lincoln, Keith, Deuel, Cheyenne and Kimball in the State of Nebraska, and Sedgwick County in the State of Colorado, and the Counties of Laramie, Albany, Carbon, Sweetwater and Uinta, in the State of Wyoming, and the Counties of Summit, Morgan, Davis and Weber, in the State of Utah, to a Junction with the Central Pacific Railroad at a point about five miles west of Ogden in the State of Utah, a distance of 1,038.43 miles.

131. Also, the right of way and railroad track constituting a branch line of railroad extending from a point of junction with said main line at Almy Junction, Wyo-

ming, in a northerly direction to a terminus at Mine No. 7, said branch line being 3.88 miles in length.

132. Also, the right of way and railroad track constituting a branch line of railroad extending from a point of junction with said main line of said railroad in Cheyenne, Wyoming, in a northwesterly direction to a connection with the track of the Union Pacific, Denver and Gulf Railway, a distance of 2.04 miles.

133. The total length of the main line of railroad of the Union Division as above described, including said branches, being 1044.35 miles, of which 9.98 miles of the main line thereof, extending from Gilmore eastward into the Union Division yards at Omaha, is a double track railroad.

134. Also, the right of way and railroad track constituting a spur or branch line of railroad, extending from the eastern end of said main line of track in Omaha as above described, being a point about 4,950 feet southerly from the point of original construction of said railroad, northerly and easterly for a distance of about 18,000 feet, which spur track is operated to reach certain ice houses and industries.

135. Also, the lots, yards, terminal grounds, shop grounds, station grounds, streets and alleys, and other tracts of land owned, acquired or appropriated by or for the said Union Pacific Railway Company for the purposes of its said railroad, including lands aggregating in area about 371.94 acres of land in the City of Omaha.

136. Also the shops, freight depots, general office building, round house and other structures and facilities upon said premises constructed or acquired for or used for the purposes of, or in connection with, said railway property.

137. Also the right of way, station, terminal and other grounds of the said railway company pertaining to or acquired or used in connection with or for the purposes of the said Union Division of said railway, along said line thereof, including certain lands the title to which stands in the names of certain trustees for said Union Pacific Railway Company, as hereinafter more fully stated.

138. Also the depots, engine houses, car houses, station houses, warehouses, machine shops, workshops and other structures and facilities thereon or connected

therewith, constructed, appropriated or used for or in connection with the said Union Division of said railway for the running or operation thereof.

139. Also the switches, turnouts, sidings and spurs aggregating in length about 53 miles of track in the said City of Omaha, and about 11¼ miles of track in the City of Ogden, Utah, and in all about 376.75 miles of track.

140. Also the lands, and interests and easements in lands, water rights, pipes, pump houses, structures, pipe lines, appliances, facilities and easements of the said railway company pertaining to or connected with the water supply of said railway company upon or along its said railroad.

141. Also the tools, appliances, fixtures, supplies and materials located on or along the said Union Division of said railroad property, or acquired or provided for use in connection therewith, or for the purposes thereof.

142. Also the locomotives, passenger cars, Pullman sleeping cars, dining cars, freight cars and other cars, and the equipment and rolling stock, and all interest of said railway company in equipment and rolling stock, owned, acquired or provided for said railway company, for the purposes of said Union Division thereof or necessary to said division for the running and operation thereof, the same being seventy per cent of all such equipment and rolling stock and interest in equipment and rolling stock owned or acquired by said railway company.

143. Also the line of telegraph, telegraph material, instruments, fixtures and appliances belonging to the said railway company and located upon and provided for and pertaining to said Union Division of said property.

144. Also all the furniture, fixtures, appliances, apparatus, supplies and material in the various offices of said railway company upon or remote from said line of railroad, including the principal offices of said company at Omaha and Boston, owned, acquired or provided for use in connection with said Union Division of said railway property.

145. Also all the rights and property of the character as above owned or provided for common use of the several divisions of said railway company's property to the extent of the proportionate use and devotion thereof to the busi-

ness and concerns of the said Union Division of said railway company's property.

146. Also the rights and interests of said Union Pacific Railway Company in or to property of every kind and nature whether of the character as herein described or otherwise, owned, acquired or provided for the use of said Union Division of its said railway.

147. Also the corporate rights and franchises of said Union Pacific Railway Company so far as they pertain to said Union Division thereof.

148. Also the moneys, credits and property not herein otherwise specified, in the possession of the Receivers or to which they are or may be entitled, which have been or may be derived by said Receivers from or on account of the property of the Union Pacific Railway Company pertaining to the Union Division thereof, or from the sale or other disposition of any said property or from the use of the same, or from the operation thereof by said Receivers, subject to the charges of said Receivers in respect thereto.

149. That the following schedule marked "Schedule 3" is a more particular description of portions of the property above described as included in the Union Division of said Railway Company's property.

## SCHEDULE 3.

DESCRIPTION OF PROPERTY OF THE UNION PACIFIC RAILWAY COMPANY INCLUDING RIGHT OF WAY, STATION GROUNDS, TRACKS AND STRUCTURES.

### UNION DIVISION.

| | |
|---|---|
| MAIN LINE: Extending from Initial Point near Northeast corner Section 10, T. 15 N. R. 13 E. Omaha, Neb. in a westerly direction, to connection with the Central Pacific Railroad at a point five miles west of Ogden, Utah Ter., said five miles being leased to the Central Pacific Railroad Company ..... | 1038.43 mls. |
| BRANCH LINES: Extending from junction with the Main Line at Almy Junction, Wyo., in a northerly direction to terminus at Mine No. 7, exclusive of 1.72 miles owned by the Rocky Mountain Coal & Iron Co..... | 3.88 mls. |
| Extending from junction with the Main line of Cheyenne, Wyo., in a northwesterly direction in connection with track of the U. P. D. & G. Ry. Co..... | 2.04 mls. |
| Total Mileage Main Track..... | 1044.35 mls. |
| Mileage Second Main Track..... | 9.98 mls. |

# RIGHT OF WAY AND STATION GROUNDS.

## City of Omaha, Douglas County, Nebraska.

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| C | 1 | Entire Lot | 7920 | |
| | 2 | Part of Lot | 7075 | |
| | 3 | " | 4863 | |
| | 4 | " | 132 | |
| | 7 | " | 5290 | |
| | 8 | " | 5431 | 30,71 |
| F | 5 | Entire Lot | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | 26,13 |
| L | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,69 |
| M | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,69 |
| N | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,69 |
| O | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 6 | Entire Lot ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| P | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 1 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | |
| | 9 | " ..... | 8712 | |
| | 10 | " ..... | 9240 | |
| | 11 | " ..... | 10890 | 103,026 |
| | 12 | " ..... | 8712 | |
| 2 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 3 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 4 | 1 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 2 | Entire Lot ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 5 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 6 | 1 | Part of Lot..... | 6001 | |
| | 2 | " ..... | 537 | 6,538 |
| 28 | 1 | Entire Lot ..... | 8712 | |
| | 2 | Part of Lot..... | 8068 | |
| | 3 | " ..... | 2537 | |
| | 7 | " ..... | 391 | |
| | 8 | " ..... | 5284 | 24,992 |
| 29 | 1 | Entire Lot ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 30 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 31 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 3 | Entire Lot ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 32 | 1 | " ..... | 14850 | |
| | 2 | " ..... | 16500 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | |
| | 9 | " ..... | 8712 | |
| | 10 | " ..... | 8712 | |
| | 11 | " ..... | 18150 | |
| | 12 | " ..... | 19800 | 138,996 |
| 33 | 1 | " ..... | 12408 | |
| | 2 | " ..... | 13992 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 11616 | |
| | 7 | " ..... | 13200 | 77,352 |
| 34 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 35 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 8 | Entire Lot | 8712 | 69,696 |
| 36 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 37 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | Part of Lot | 8065 | |
| | 4 | " | 3696 | |
| | 6 | " | 768 | |
| | 7 | " | 7360 | |
| | 8 | " | 2937 | 40,250 |
| 63 | 1 | Entire Lot | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 64 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |
| 65 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | |
| | 8 | " | 8712 | 69,696 |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| 66 | 1 | Entire Lot..... | 8448 | |
| | 2 | " ..... | 10032 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | |
| | 9 | " ..... | 8712 | |
| | 10 | " ..... | 8712 | |
| | 11 | " ..... | 11814 | |
| | 12 | " ..... | 13266 | 113,256 |
| 67 | 1 | " ..... | 9600 | |
| | 2 | " ..... | 10800 | |
| | 3 | " ..... | 12000 | |
| | 4 | " ..... | 13200 | 45,600 |
| 68 | 1 | " ..... | 7920 | |
| | 2 | " ..... | 7920 | |
| | 3 | " ..... | 7920 | |
| | 4 | " ..... | 7920 | |
| | 5 | " ..... | 7920 | |
| | 6 | " ..... | 7920 | |
| | 7 | " ..... | 7920 | |
| | 8 | " ..... | 7920 | 63,360 |
| 69 | 1 | " ..... | 7920 | |
| | 2 | " ..... | 7920 | |
| | 3 | " ..... | 7920 | |
| | 4 | " ..... | 7920 | |
| | 5 | " ..... | 7920 | |
| | 6 | " ..... | 7920 | |
| | 7 | " ..... | 7920 | |
| | 8 | " ..... | 7920 | 63,360 |
| 94 | 1 | " ..... | 7920 | |
| | 2 | " ..... | 7920 | |
| | 3 | Part of Lot ..... | 7056 | |
| | 4 | " ..... | 4706 | |
| | 5 | " ..... | 2991 | |
| | 6 | " ..... | 506 | |
| | 7 | Part of Lot ..... | 7872 | |
| | 8 | Entire Lot ..... | 7920 | 46,391 |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| 95 | 1 | Entire Lot ..... | 7920 | |
| | 2 | " ..... | 7920 | |
| | 3 | " ..... | 7920 | |
| | 4 | " ..... | 7920 | |
| | 5 | " ..... | 7920 | |
| | 6 | " ..... | 7920 | |
| | 7 | " ..... | 7920 | |
| | 8 | " ..... | 7920 | 63,360 |
| 96 | 1 | " ..... | 9030 | |
| | 2 | " ..... | 10290 | |
| | 3 | " ..... | 7920 | |
| | 4 | " ..... | 7920 | |
| | 5 | " ..... | 7920 | |
| | 6 | " ..... | 7920 | |
| | 7 | " ..... | 11550 | |
| | 8 | " ..... | 12810 | 75,360 |
| 97 | 1 | " ..... | 9009 | |
| | 2 | " ..... | 10395 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | |
| | 9 | " ..... | 8712 | |
| | 10 | " ..... | 8712 | |
| | 11 | " ..... | 12441 | |
| | 12 | " ..... | 13827 | 115,368 |
| 98 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | 26,136 |
| 99 | 1 | Part of Lot ..... | 6429 | |
| | 2 | " ..... | 6245 | |
| | 8 | " ..... | 444 | 13,118 |
| 127 | 1 | Entire Lot ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | Entire Lot ..... | 8712 | |
| | 6 | Part of Lot ..... | 2640 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 7 | Entire Lot ..... | 8712 | |
| | 8 | " ..... | 8712 | 63,624 |
| 29 | 4 | " ..... | 650 | |
| | 5 | " ..... | 6410 | 7,060 |
| 30 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 43,560 |
| 156 | 1 | " ..... | 7590 | |
| | 2 | Part of Lot ..... | 1327 | |
| | 3 | " ..... | 160 | |
| | 7 | " ..... | 4224 | 13,301 |
| 157 | 5 | " ..... | 870 | |
| | 6 | " ..... | 7410 | 8,280 |
| 160 | 2 | Entire Lot ..... | 7009 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | Part of Lot ..... | 8296 | |
| | 6 | Entire Lot ..... | 8712 | 41,441 |
| 178 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 179 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 180 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 5 | Entire Lot ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 181 | 4 | " ..... | 8712 | 8,712 |
| 187 | 6 | " ..... | 8712 | |
| | 7 | " ..... | 7708 | 16,420 |
| 188 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | 34,848 |
| 189 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | 34,848 |
| 190 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | Part of Lot ..... | 5676 | |
| | 4 | " ..... | 4488 | |
| | 5 | " ..... | 924 | |
| | 6 | " ..... | 75 | 28,587 |
| 191 | 1 | " ..... | 1760 | |
| | 2 | " ..... | 748 | |
| | 5 | Entire Lot ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | Part of Lot ..... | 4686 | |
| | 8 | " ..... | 3630 | 28,248 |
| 192 | 5 | " ..... | 2567 | |
| | 6 | " ..... | 3604 | |
| | 7 | Entire Lot ..... | 8712 | |
| | 8 | " ..... | 8712 | 23,595 |
| 200 | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | Part of Lot ..... | 8465 | |
| | 8 | " ..... | 6732 | 32,621 |
| 201 | 1 | Entire Lot ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | Part of Lot ..... | 4486 | |
| | 4 | " ..... | 2836 | |
| | 5 | " ..... | 2904 | |
| | 6 | " ..... | 1452 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 7 | Part of Lot ..... | 182 | 29,284 |
| 202 | 1 | Entire Lot ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | Part of Lot. ..... | 5940 | 32,076 |
| 224 | 1 | " ..... | 5808 | |
| | 2 | " ..... | 8349 | |
| | 3 | Entire Lot ..... | 8712 | |
| | 4 | Part of Lot ..... | 3135 | |
| | 5 | " ..... | 5247 | |
| | 6 | " ..... | 1749 | 33,000 |
| 225 | 7 | Entire Lot ..... | 8712 | |
| | 8 | " ..... | 8712 | 17,424 |
| 226 | 1 | Part of Lot ..... | 3234 | |
| | 2 | " ..... | 6534 | |
| | 3 | " ..... | 3190 | |
| | 4 | " ..... | 3168 | |
| | 5 | " ..... | 3102 | |
| | 6 | " ..... | 319 | 19,547 |
| 286 | 1 | Entire Lot ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 299 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 300 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 6 | Entire Lot ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 309 | 8 | " ..... | 8712 | 8,712 |
| 310 | 8 | " ..... | 8712 | 8,712 |
| 311 | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 26,136 |
| 312 | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 34,848 |
| 313 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 314 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 315 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 316 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 34,848 |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| 317 | 2 | Entire Lot ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 26,136 |
| 318 | 2 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 17,424 |
| 319 | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | 34,848 |
| 322 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 323 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 324 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 325 | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | 34,848 |
| 326 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 4 | Entire Lot ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 327 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 328 | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 34,848 |
| 329 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 330 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 331 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 8 | Entire Lot | 8712 | 69,696 |
| 332 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | 69,696 |
| | 8 | " | 8712 | |
| 333 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 8712 | |
| | 5 | " | 8712 | |
| | 6 | " | 8712 | |
| | 7 | " | 8712 | 69,696 |
| | 8 | " | 8712 | |
| 334 | 1 | " | 8712 | |
| | 2 | " | 8121 | |
| | 3 | Part of Lot | 4866 | |
| | 4 | " | 8712 | |
| | 5 | Entire Lot | 6054 | |
| | 6 | Part of Lot | 6071 | |
| | 7 | " | 8712 | 59,960 |
| | 8 | Entire Lot | 7768 | |
| 354 | 1 | Part of Lot | 8712 | |
| | 2 | Entire Lot | 8712 | 25,192 |
| | 8 | " | 8712 | |
| 355 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | 4915 | |
| | 5 | Part of Lot | 7952 | |
| | 6 | " | 8712 | |
| | 7 | Entire Lot | 8712 | 65,139 |
| | 8 | " | 8712 | |
| 356 | 1 | " | 8712 | |
| | 2 | " | 8712 | |
| | 3 | " | 8712 | |
| | 4 | " | | |

| Block | Lot | Description | Square Feet | Total Square Feet |
|---|---|---|---|---|
| | 5 | Entire Lot ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 357 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 358 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 359 | 1 | " ..... | 8712 | |
| | 2 | " ..... | 8712 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 8712 | |
| | 7 | " ..... | 8712 | |
| | 8 | " ..... | 8712 | 69,696 |
| 360 | 1 | " ..... | 13068 | |
| | 2 | " ..... | 13068 | |
| | 3 | " ..... | 8712 | |
| | 4 | " ..... | 8712 | |
| | 5 | " ..... | 8712 | |
| | 6 | " ..... | 9471 | |
| | 7 | " ..... | 10989 | 72,732 |

| | Block | Lot | Description | Square Feet | Total Square Ft. |
|---|---|---|---|---|---|
| McCague's Addn . | 7 | 5 | Part of Lot | 630 | |
| | 7 | 6 | " | 700 | |
| | 7 | 7 | " | 514 | 1,844 |
| Levee within corporate limits of city | | | | 12505 | 12,505 |

| Name of Street | Location | Sq. Ft. | Total Sq. Ft. |
|---|---|---|---|
| Capitol Ave | East of 7th | 21,840 | |
| " | Bet. 7th & 8th | 37,680 | 59,520 |
| " | East of 7th | 5,600 | |
| Davenport St | Bet. 7th & 8th | 31,400 | |
| " | " 8th & 9th | 27,954 | 64,954 |
| " | " 8th & 9th | 26,800 | |
| Chicago St | " 9th & 10th | 31,400 | 58,200 |
| " | " 8th & 9th | 28,900 | |
| Cass St | " 9th & 10th | 31,400 | |
| " | " 10th & 11th | 31,280 | 91,580 |
| " | East of 9th | 6,200 | |
| California St | Bet. 9th & 10th | 31,400 | |
| " | " 10th & 11th | 31,400 | |
| " | " 11th & 12th | 20,400 | 89,400 |
| " | East of 10th | 19,200 | |
| Webster St | Bet. 10th & 11th | 31,400 | |
| " | " 11th & 12th | 31,400 | |
| " | " 12th & 13th | 8,500 | 90,500 |
| " | " 10th & 11th | 30,734 | |
| Burt St | " 11th & 12th | 31,400 | |
| " | " 12th & 13th | 31,400 | |
| " | " 13th & 14th | 18,300 | 111,834 |
| " | East of 11th | 8,300 | |
| Cuming St | Bet. 11th & 12th | 31,400 | |
| " | " 12th & 13th | 31,400 | |
| " | " 13th & 14th | 30,124 | 101,224 |
| " | South of Capitol Ave | 4,775 | |
| Seventh St | Bet. Capitol & Davenport | 29,000 | |
| " | " Davenport & Chicago | 10,800 | 44,575 |
| " | " Jones & Jackson | 28,400 | |
| Eighth St | " Capitol & Davenport | 29,000 | |
| " | " Davenport & Chicago | 27,700 | 85,100 |
| " | " Davenport & Chicago | 17,100 | |
| Ninth St | " Chicago & Cass | 33,400 | |
| " | " Cass & California | 33,400 | |
| " | " California & Webster | 11,700 | 95,600 |
| " | " Chicago & Cass | 33,400 | |
| Tenth St | " Cass & California | 33,400 | |
| " | " California & Webster | 33,400 | |
| " | " Webster & Burt | 31,168 | 131,368 |
| " | " Chicago & Cass | 180 | |
| Eleventh St | " Cass & California | 31,813 | |
| " | " California & Webster | 33,400 | |
| " | " Webster & Burt | 33,400 | |
| " | " Burt & Cuming | 33,400 | |
| " | " Cuming & Izard | 18,670 | 150,863 |
| " | " California & Webster | 14,750 | |
| Twelfth St | " Webster & Burt | 33,400 | |
| " | " Burt & Cuming | 33,400 | |
| " | " Cuming & Izard | 30,900 | 112,450 |
| " | " Webster & Burt | 25,125 | |
| Thirteenth St | " Burt & Cuming | 33,400 | |
| " | " Cuming & Izard | 30,900 | 89,425 |
| " | " Cuming & Izard | 5,880 | 5,880 |
| Fourteenth St | | | |
| Alley in Block 3 | Entire | 5,280 | |
| 4 | " | 5,280 | |
| 5 | " | 5,280 | |
| 28 | Part | 1,140 | |

| Name of Street | | Location | Sq. Ft. | Total Sq. Ft. |
|---|---|---|---|---|
| | 29 | Entire | 5,280 | |
| | 30 | " | 5,280 | |
| | 31 | Part | 3,200 | |
| | 34 | " | 680 | |
| | 35 | Entire | 5,280 | |
| | 36 | " | 5,280 | |
| | 37 | Part | 2,360 | |
| | 63 | " | 2,220 | |
| | 64 | " | 2,440 | |
| | 65 | Entire | 5,280 | |
| | 178 | " | 5,280 | |
| | 179 | " | 5,280 | |
| | 322 | " | 5,280 | |
| | 323 | " | 5,280 | |
| | 324 | " | 5,280 | |
| | 331 | Part | 3,520 | |
| | 332 | Entire | 5,280 | |
| | 333 | " | 5,280 | |
| | 334 | Part | 4,980 | |
| | 354 | " | 1,320 | |
| | 355 | Entire | 5,280 | |
| | 356 | " | 5,280 | |
| | 357 | " | 5,280 | |
| | 358 | Part | 1,000 | 117,900 |
| North Omaha | 9 | Lot 10 Part | 1,428 | |
| | | 11 " | 5,635 | |
| | | 12 " | 5,450 | |
| | | 13 " | 5,700 | |
| | | 14 " | 875 | 19,088 |
| | 13 | 5 " | 1,485 | |
| | | 6 " | 4,700 | |
| | | 7 " | 5,995 | |
| | | 8 " | 5,450 | |
| | | 9 " | 3,075 | |
| | | 10 " | 10 | |
| | | 11 " | 5,920 | |
| | | 12 " | 3,875 | |
| | | 13 " | 2,000 | |
| | | 14 " | 220 | 32,730 |
| | 14 | 2 " | 1,746 | |
| | | 3 " | 6,082 | |
| | | 4 " | 5,312 | |
| | | 5 " | 580 | |
| | | 15 " | 1,330 | |
| | | 16 " | 5,760 | |
| | | 17 " | 5,800 | |
| | | 18 " | 1,280 | 27,890 |
| | 15 | 1 " | 6,187 | |
| | | 2 " | 2,140 | |
| | | 18 " | 3,000 | |
| | | 19 Entire | 6,250 | |
| | | 20 Part | 4,290 | 21,867 |
| | 16 | 20 " | 500 | 500 |

## COUNTY OF DOUGLAS.

| T. | R. | Sec. | Description | Acres | Total |
|---|---|---|---|---|---|
| 15N | 13E | 2 | NW ¼ NE ¼ R.O.W. 100 ft. wide | 3.22 | |
| | | | NE ¼ NW ¼ " 100 ft. " | 2.53 | |
| | | | SE ¼ NW ¼ " 100 ft. " | .69 | |
| | | | NE ¼ NE ¼ " 100 ft. " | 3.22 | |
| | | | SW ¼ NW ¼ " 50 ft. " | 1.61 | 11.27 |
| | | 3 | E ½ SE ¼ " 100 ft. " | 6.098 | 6.098 |
| | | 10 | NE ¼ NE ¼ " 100 ft. " | 3.058 | |
| | | | NE ¼ NE ¼ " 100 ft. " In. Pt. | 3.56 | |
| | | | Lot 3 Entire lot N. of Locust St | 26.77 | |
| | | | Lot 4 R.O.W. 100 ft. wide In. Pt. line | 3.07 | |
| | | | Lot 4 " 100 " | 3.07 | |
| | | | Lot 6 " 100 " In. Pt line | 1.44 | |
| | | | Lot 6 " 100 " | 3.32 | 44.288 |
| | | 11 | Lot 1 South part | 9.13 | 9.13 |
| | | 14 | Lot 1 Part of lot | 25.34 | 25.34 |
| | | 15 | NE ¼ NE ¼ R.O.W. 100 ft. wide | 3.07 | |
| | | | Lot 4 East part of lot | 10.27 | 13.34 |
| | | 23 | Lot 3 Triangular tract on W. side | .236 | |
| | | | Lot 3 20 ft. strip on West side | .21 | |
| | | | Lot 3 15 ft " " | .20 | .646 |
| | | 22 | SE ¼ SW ¼ Strip 60 ft. wide | .34 | .34 |
| | | 27 | E ½ NW ¼ R.O.W. 70 ft. wide | 2.89 | |
| | | | SW ¼ NW ¼ R.O.W. 200 ft. wide | 7.71 | |
| | | | NW ¼ SW ¼ " | .52 | 11.12 |
| | | 28 | SE ¼ NE ¼ R.O.W | .10 | |
| | | | SE ¼ SE ¼ part—Sheely tract | 32.992 | |
| | | | SE ¼ SE ¼ R.O.W. 200 ft. wide | 6.44 | 39.532 |
| | | 33 | NE ¼ R.O.W. 200 ft. wide | 12.89 | |
| | | | N ½ S ½ R.O.W.200 ft. wide | 6.80 | |
| | | | N ½ S ½ Extra strips on E side | .35 | |
| | | | S ½ S ½ R.O.W. 190 ft. wide | 5.78 | 25.82 |
| 14 | 13 | 4 | NW ¼ R.O.W. 100 ft. wide | .56 | |
| | | | NE ¼ Right of Way 100 ft. wide | 5.61 | |
| | | | SE ¼ " " " 100 " | 6.35 | |
| | | | SE ¼ Part of St. South Omaha | 1.49 | 14.01 |
| | | 9 | NE ¼ R.O.W.100 ft. wide | 3.83 | 3.83 |
| | | 10 | SW ¼ NW ¼ R.O.W. 100 ft. wide | 3.28 | |
| | | | NW ¼ SW ¼ " 100 " | 1.81 | |
| | | | E ½ SW ¼ " 200 " | 10.76 | 15.85 |

## STATE OF NEBRASKA

| County | Description | Miles | Acres | Total Acres |
|---|---|---|---|---|
| Douglas | Right of Way 100 ft. wide | 8.4 | 101.97 | |
| | " " 200 " | 8.0 | 193.92 | |
| | " " 400 " | 7.4 | 358.6 | |
| | Millard Ex. Grds. 200 ft. wide | | 14.4 | |
| | Waterloo " | | 14.3 | |
| | Valley Lots 6 & 8 Blk 50 | | .4 | |
| | Mercer Extra Grds | | 28.5 | 712.19 |
| Sarpy | Right of Way 100 ft. wide | 12.83 | 155.75 | |
| | Gilmore Extra Grounds | | 32.50 | |
| | Papillion Ex. Grds. 300 ft. wide | | 18.2 | |
| | " " 200 ft. wide | | 9.2 | 215.65 |
| Dodge | Right of Way 100 ft. wide | 22.2 | 269.5 | |
| | " " 400 ft. wide | 3.0 | 145.38 | |
| | Fremont Depot Grds. 300 ft wide | | 14.9 | |
| | North Bend " 300 " | | 9.83 | 439.61 |

| County | Description | Miles | Acres | Total Acres |
|---|---|---|---|---|
| Colfax | Right of Way 100 ft. wide | 13.3 | 161.46 | |
| | " " 200 " | 1.5 | 36.36 | |
| | " " | 3.4 | 164.76 | |
| | Schuyler Depot Grds 300 ft. wide | | 13.75 | |
| | Extra Grds. in Sec. 13-17 N-3 E | | 15.75 | |
| | Benton Depot Grds | | 2.12 | 394.20 |
| Platte | Right of Way 100 ft. wide | 8.5 | 103.19 | |
| | " " 200 " | 2.3 | 55.75 | |
| | " " 400 " | 8.6 | 416.75 | |
| | Columbus Depot Grds. Town Lts | | 6.62 | |
| | " " " Out Lot 6 | | 7.93 | |
| | " " " " " 7 ½ Int | | 9.25 | |
| | " " " 300 ft. wide | | 18.36 | |
| | Duncan " " | | 18.18 | 636.03 |
| Merrick | Right of Way 100 ft. wide | 1.9 | 23.06 | |
| | " " 200 " | 15.3 | 370.87 | |
| | " " 400 " | 27.8 | 1347.18 | |
| | Silver Creek Dep. Grds. 300 ft. wide | | 18.18 | |
| | Clarks " " 300 " | | 10.9 | |
| | Chapmans " " 300 " | | 9.09 | |
| | Central City " " 300 " | | 36.36 | 1815.64 |
| Hall | Right of Way 100 ft. wide | 2.6 | 31.56 | |
| | " " 200 " | 7.5 | 181.80 | |
| | " " 400 " | 15.2 | 726.59 | |
| | Grand Island—Shop Grounds | | 158.50 | |
| | " " Stock yards grds | | 4.62 | |
| | " " 22 city lots | | 4.4 | |
| | Alda Depot Grds. 160 ft. wide | | 12.90 | |
| | Wood River Dep. Grds. 300 ft. wide | | 10.90 | 1141.27 |
| Buffalo | Right of Way 100 ft. wide | 2.7 | 32.77 | |
| | " " 200 " | 11.2 | 271.48 | |
| | " " 400 " | 24.3 | 1177.57 | |
| | Shelton Depot Grds. 300 ft. wide | | 18.18 | |
| | Gibbon " " 300 " | | 7.30 | |
| | Elm Cr'k " " 300 " | | 9.09 | |
| | Kearney Lot 234 | | 11.80 | |
| | " Depot Grds | | 4.56 | |
| | " Depot Grds. & Extra R. O. W | | 31.32 | 1564.07 |
| Dawson | Right of Way 100 ft. wide | 1.5 | 18.21 | |
| | " " 200 ft. wide | 12.1 | 293.30 | |
| | " " 400 ft. wide | 31.5 | 1526.49 | |
| | Overton Depot Grds. 300 ft. wide | | 9.09 | |
| | Lexington " 300 ft. " | | 18.18 | |
| | Cozard " 300 ft. " | | 7.27 | |
| | Gothenburg " 300 ft. " | | 21.60 | 1894.14 |
| Lincoln | Right of Way 100 ft. wide | 1. | 12.14 | |
| | " " 200 ft. " | 19.4 | 470.25 | |
| | " " 400 ft. " | 38.2 | 1851.17 | |
| | N. Platte Depot Grds. 700 ft. wide | | 84.82 | |
| | O'Fallon's " 200 ft. " | | 24.24 | 2442.82 |
| Keith | Right of Way 100 ft. wide | 1.5 | 18.21 | |
| | " " 200 ft. " | 13.3 | 322.39 | |
| | " " 400 ft. " | 26.7 | 1293.88 | |
| | Paxton Depot Grds. 100 ft. wide | | 6.07 | |
| | Ogallala " 300 ft. " | | 36.36 | 1676.91 |
| Deuel | Right of Way 100 ft. wide | 0.5 | 6.07 | |
| | " " 200 ft. " | 5.8 | 140.59 | |
| | " " 400 ft. " | 20.5 | 993.43 | |
| | Big Springs Depot Grds | | 9.00 | |
| | " Ex. Grds. E. of St'n | | 35.00 | 1184.09 |

| County | Description | Miles | Acres | Total Acres |
|---|---|---|---|---|
| Cheyenne | Right of Way 100 ft. wide | 1.1 | 13.35 | |
| | " " 200 ft. " | 16.2 | 392.68 | |
| | " " 400 ft. " | 23.9 | 1158.19 | |
| | Lodge Pole Depot Grds. 300 ft. wide | ..... | 14.5 | |
| | Sidney Depot Grds. & sundry lots | ..... | 13.25 | 1591.97 |
| Kimball | Right of Way 300 ft. wide | 17.75 | 645.39 | |
| | " " 400 " | 19.00 | 920.74 | 1566.13 |
| | STATE OF COLORADO. | | | |
| Sedgwick | Right of Way 100 ft. wide | 0.5 | 6.07 | |
| | " " 200 ft. " | 1.5 | 36.36 | |
| | " " 400 ft. " | 6.9 | 334.37 | |
| | Julesburg Dep. Grds. 300 ft. wide | ..... | 18.18 | |
| | " " reserved 28-12-44 | ..... | 34.69 | |
| | " " " 33-12-44 | ..... | 40.00 | 469.67 |
| | STATE OF WYOMING. | | | |
| Laramie | Right of Way (Cheyenne) 100 ft. wide | 2.75 | 33.38 | |
| | Right of Way (Cheyenne) 200 ft. wide | 18.00 | 436.32 | |
| | Right of Way (Cheyenne) 300 ft. wide | 4.35 | 158.16 | |
| | Right of Way (Cheyenne) 400 ft. wide | 44.65 | 2163.74 | |
| | Granite Canon Reservoir Sites, &c | ..... | 160.00 | |
| | Cheyenne Depot & Shop Grds. Gov. Lot 4 | ..... | 26.30 | |
| | Cheyenne Depot & Shop Grds. Gov. Lot 5 | ..... | 43.01 | |
| | Cheyenne Depot & Shop Grds. Lot 7 | ..... | 46.58 | |
| | Cheyenne Depot & Shop | ..... | 145.97 | |
| | Cheyenne Depot R. O. W. extra 100 ft. wide | ..... | 4.03 | |
| | Cheyenne R. O. W. extra 300 ft. wide | ..... | 17.70 | |
| | Cheyenne Grds. reserved 1 13-67 | ..... | 177.61 | |
| | Camp Carlin Spur R. O. W. pt. of lots | ..... | 3.17 | 3415.97 |
| Albany | Right of Way 100 ft. wide | 1.0 | 12.14 | |
| | " " 400 ft. " | 94.49 | 4578.98 | |
| | Laramie Depot Grounds | ..... | 90.70 | |
| | " Soda Works Grds | ..... | 23.41 | |
| | " Grds. reserved 5-15-73 | ..... | 24.24 | |
| | Wyoming Grds. reserved | ..... | 46.55 | |
| | Cooper's lake pump hse. site | ..... | 2.00 | |
| | Rock Creek extra grounds | ..... | 9.25 | |
| | Aurora—Sec. 4-22-77 | ..... | 160.00 | 4947.27 |
| Carbon | Right of Way 100 ft. wide | 0.8 | 9.71 | |
| | " " 400 ft. " | 85.75 | 4155.44 | |
| | Rawlins Depot Grds. reserved | ..... | 38.70 | |
| | Medicine Bow Depot Grds. 600 ft. wide | ..... | 36.36 | |
| | Medicine Bow, Reserved for Stock Yards | ..... | 49.60 | 4289.81 |
| Sweetwater | Right of Way 100 ft. wide | 0.43 | 5.22 | |
| | " " 400 ft. " | 153.14 | 7421.16 | |
| | Rock Springs Depot Grds. 300 ft. wide | ..... | 15.63 | |
| | Rock Springs Depot Grds | ..... | 8.78 | |
| | Green River " " | ..... | 27.20 | |
| | " " reserve in S. 23-18-107 | about | 184.00 | |
| | Granger reserved by Land Dept | ..... | 25.50 | 7687.49 |
| Uinta | Right of Way 100 ft. wide | 1.2 | 14.56 | |
| | " " 200 ft. wide | 11.30 | 273.91 | |
| | " " 400 ft. wide | 70.70 | 3426.12 | |
| | Aspen Ex. Grds. reserved | ..... | 54.50 | |
| | Evanston Depot Grds. reserved | ..... | 151.00 | 3920.09 |

| County | Description | Miles | Acres | Total Acres |
|---|---|---|---|---|
| | STATE OF UTAH | | | |
| Summit..... | Right of Way 200 ft. wide ..... | 1.08 | 26.17 | |
| | " " 400 ft. " ..... | 36.00 | 1744.56 | 1770.73 |
| Morgan ..... | Right of Way 200 ft. wide ..... | 1.62 | 39.26 | |
| | " " 400 ft. " ..... | 19.80 | 959.50 | |
| | Ex. Grds. reserved in 25-5 N-1 E..... | ..... | 67.54 | 1066.30 |
| Davis..... | Right of Way 400 ft. wide ..... | 0.14 | 6.78 | 6.78 |
| Weber ..... | Right of Way 100 ft. wide ..... | 6.2 | 75.26 | |
| | " " 200 ft. " ..... | 0.5 | 12.12 | |
| | " " 400 ft. " ..... | 9.8 | 474.90 | |
| | Ogden Terminal Grd. Block 10..... | ..... | 2.4 | |
| | " " " " 1..... | ..... | 15.17 | |
| | " " " " 2..... | ..... | 7.10 | |
| | Ogden Terminal Joint C. P. & U. P. Blk. 1 ..... | ..... | 6.87 | |
| | Ogden Terminal Joint C. P. & U. P. Blk. 2..... | ..... | 32.29 | |
| | Ogden Terminal Joint C. P. & U. P. Blk. 3..... | ..... | 32.74 | |
| | Ogden Terminal Joint C. P. & U. P. Blk. 1..... | ..... | 6.60 | |
| | Ogden Terminal leased to Ogden Blk. 2 ..... | ..... | 23.95 | |
| | Ogden Terminal Union Depot Co. Blk. 3 ..... | ..... | 26.61 | 716.01 |

# UNION DIVISION.

## TRACKS AND STRUCTURES.

### *Rail in Main and Second Tracks.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| on rail | weighing | 50 | lbs. | per | yard | 0.78 | mls. |
| " | " | 56 | " | " | " | 1.41 | " |
| teel | " | 52 | " | " | " | 4.82 | " |
| " | " | 56 | " | " | " | 78.29 | " |
| " | " | 60 | " | " | " | 317.40 | " |
| " | " | 67 | " | " | " | 22.38 | " |
| " | " | 70 | " | " | " | 373.59 | " |
| " | " | 75 | " | " | " | 255.66 | " |

| | | | |
|---|---|---|---|
| maha | 52 M. 5258 Ft. Side Tracks. | | |
| | Barn | frame | 36x78 |
| | Freight house | brick | 33x128 |
| | Freight shed | " | 128x341 |
| | Oil house | " | 20x39 |
| | Yardmaster's office | frame | 15x25 |
| | Track scales | | 36 ft. |
| | " " | | 64 ft. |
| | Sand house | brick. | 24x60 |
| | Ice house | frame | 30x100 |
| | Track scales | | 42 ft. |
| | 3 stand pipes, water from city mains. | | |
| | Record storage room | frame | 30x90 |
| | Machine shop | brick | 140x150 |
| | Office, shop & Eng. room | " | 27x90 |
| | Addn | " | 16x70 |
| | Machine shop | " | 60x120 |
| | Blacksmith shop | " | 76x200 |
| | Foundry | frame | 76x305 |
| | Brass foundry | brick | 39x49 |
| | Babbitting room | " | 49x49 |
| | Sheet Iron shop | " | 50x76 |
| | Tin shop | " | 40x50 |
| | Addn | " | 28x30 |
| | Addn | " | 26x39 |
| | Locomotive repair shop | frame | 38x125 |
| | Addn | " | 20x32 |
| | Steam heating house | " | 18x37 |
| | Car inspector's office | " | 18x26 |
| | Office Supt. M. P. & M | brick | 76x83 |
| | Boiler shop | " | 80x150 |
| | Foundry, office & store hse | frame | 14x127 |
| | Passenger car shop | " | 60x590 |
| | Freight car shop | " | 40x390 |
| | Flat car shop | " | 30x390 |
| | Car machine shop | " | 40x390 |
| | Eng. & boiler house | brick | 40x50 |
| | Addn | " | 16x22 |
| | Turntable at car shop. | | |
| | Air brake house | frame | 12x14 |
| | Air brake store house | " | 20x40 |
| | Paint store house | " | 20x30 |
| | Pattern shop | " | 30x80 |
| | Locomotive paint shop | " | 20x78 |
| | Drying house | brick | 21x73 |
| | Lumber houses, sheds, &c | frame | |

| | | | |
|---|---|---|---|
| | Truck shop | frame | 40x58 |
| | Locomotive house | " | 32x160 |
| | Iron store house | " | 43x140 |
| | Charcoal house | " | 16x34 |
| | Fire engine house | brick | 30x103 |
| | Oil house | " | 24x37 |
| | Tender tank and truck hse | frame | 30x211 |
| | Carpenter shop | " | 16x28 |
| | Foundry shed | " | 24x167 |
| | Paint & coke shop | " | 34x72 |
| | Sand shed | " | 16x218 |
| | Platforms, bins &c | | |
| | Blacksmith shop | " | 20x40 |
| | Engine & boiler house | brick | 25x28 |
| | 24 stalls (Loco. shp.) | " | |
| | 50 ft. turntable. | | |
| | Store house "B" | frame | 44x244 |
| | " " "A" | " | 45x223 |
| | " " "C" | " | 30x105 |
| | Oil store house | " | 40x120 |
| | Chemical test room | " | 20x52 |
| | Addn | " | 14x18 |
| | General office building | brick | 100x132 |
| South Omaha | 5 M. 4676 ft. Side Tracks. | | |
| | Depot | frame | 24x84 |
| | Express office | " | 18x25 |
| | Yardmaster's office | " | 12x20 |
| | Track scales | | 62 ft. |
| | Stand pipe, water from city main | | |
| Albright | 1 M. 280 ft. Side Tracks. | | |
| | No buildings. | | |
| Averys | 3560 ft. Side Tracks. | | |
| | Depot | brick | 20x24 |
| Gilmore Junc | 737 ft. Side Tracks . | | |
| | Interlocking & Signaling station tower. 16 levers. | frame | 12x12 |
| Gilmore | 5116 ft. Side Tracks. | | |
| | Depot | frame | 24x70 |
| | Section house | " | 24x24 |
| | Addn | " | 12x16 |
| | Stock yards | | 48x56 |
| Papillion | 2 M. 260 ft. Side Tracks. | | |
| | Depot | frame | 24x44 |
| | Section house | " | 24x24 |
| | Stock yards | | 53x136 |
| Portal | 130 ft. Side Tracks. | | |
| | Platform | | 2888 sq. ft |
| | Interlocking & Signaling Plant. | | |
| Millard | 1 M. 1986 ft. Side Tracks. | | |
| | Depot | frame | 25x90 |
| | Section house | | 26x26 |
| | Stock yards | | 55x97 |
| | Pump house | " | 16x20 |
| | Tank, supply well. | | |
| Thurston | 2617 ft. Side Tracks. | | |
| | No buildings. | | |
| Ballast Spur | 2576 ft. Side Tracks. | | |
| | No buildings. | | |
| Elkhorn | 1 M. 2430 ft. Side Tracks. | | |
| | Depot | frame | 24x72 |
| | Section house | " | 24x24 |
| | Stock yards | | 62x100 |
| Waterloo | 5168 ft. Side Tracks. | | |

| | | | |
|---|---|---|---|
| | Depot | frame | 24x50 |
| | Stock yards | ..... | 63x74 |
| Primrose | 1611 ft. Side Tracks. | | |
| | No buildings. | | |
| Valley | 4 M. 1344 ft. Side Tracks. | | |
| | Depot | Stn & Brk | 29x125 |
| | Tenement house | frame | 24x45 |
| | | " | 9x19 |
| | Addn | " | 24x24 |
| | Section house | " | 20 pockets |
| | Coal chute | ..... | 98x98 |
| | Stock yards | | |
| Dorsey's Spur | 1584 ft. Side Tracks. | | |
| | Stock Yards | ..... | 67x134 |
| Mercer | 3303 ft. Side Tracks. | | |
| | Depot | frame | 22x45 |
| | Stock yards | ..... | 48x48 |
| Fremont | 3 M. 1378 ft. Side Tracks. | | |
| | Depot Pass | frame | 30x90 |
| | Depot Freight | " | 30x94 |
| | Section house | " | 24x24 |
| | " " | " | 16x28 |
| | Stock yards | ..... | 78x140 |
| | Stand pipe. | | |
| | Pump house. | | |
| | Tank supply well. | | |
| | Track scales | ..... | 36 ft. |
| Sanberg | 2585 ft. Side Tracks. | | |
| | No buildings. | | |
| Ames | 1 M. 1570 ft. Side Tracks. | | |
| | Depot | frame | 24x60 |
| | Section house | " | 16x24 |
| | Interlocking & Signaling plant. | | |
| North Bend | 1 M. 1522 ft. Side Tracks. | | |
| | Depot | frame | 24x70 |
| | Section house | " | 24x24 |
| | Stock yards | " | 90x138 |
| | Pump house | " | 12x20 |
| | Tank & wind mill &c. | | |
| | Water from well. | | |
| Bay State | 1554 ft. Side Tracks. | | |
| | No buildings. | | |
| Rogers | 1 M. 183 ft. Side Tracks. | | |
| | Depot | frame | 24x60 |
| | Section house | " | 26x26 |
| | Stock yards | ..... | 64x126 |
| Schuyler | 2 M. 4283 ft. Side Tracks. | | |
| | Depot | frame | 24x100 |
| | Section house | " | 24x24 |
| | " " | " | 24x24 |
| | Stock yards | ..... | 64x266 |
| | Tank, pump house &c. | | |
| | Water from well. | | |
| Lambert | 3633 ft. Side Tracks. | | |
| | No buildings. | | |
| Benton | 2882 ft. Side Tracks. | | |
| | Depot | frame | 20x40 |
| | Section house | " | 24x24 |
| | Stock yards | ..... | 64x180 |
| Warrack | 3033 ft. Side Tracks. | | |
| | No buildings. | | |
| Columbus | 5 M 3398 ft. Side Tracks | | |
| | Pass. depot | Stn & Brk. | 36x98 |

| | | | |
|---|---|---|---|
| | Freight depot | frame | 30x97 |
| | Lunch & dining room | " | 30x40 |
| | Stock yards | | 72x199 |
| | Track scales | | 8x44 |
| | Car repair shop | " | 12x24 |
| | Store house | " | 10x16 |
| | Master M. office | " | 9x29 |
| | Ice house | " | 25x80 |
| | Coal chute | | 36 pockets |
| | Bridge Watchman's hse | " | 24x24 |
| | 2 Stand pipes. | | |
| | Water from city. | | |
| Cayuga | 3021 ft Side Tracks. | | |
| | No buildings. | | |
| Duncan | 4537 ft. Side Tracks. | | |
| | Depot | frame | 25x90 |
| | Section house | " | 24x24 |
| | Stock yards | | 64x134 |
| Gardner | 3087 ft Side Tracks. | | |
| | Section house | " | 24x24 |
| Silver Creek | 5218 ft. Side Tracks . | | |
| | Depot | frame | 24x40 |
| | Section house | " | 24x24 |
| | Tank, pump hse., wind mill, &c. Water from well. | | |
| | Stock yards | | 64x192 |
| Havens | 4676 ft. Side Tracks. | | |
| | Stock yards | | 48x100 |
| | Section house | | 24x24 |
| Clarks | 1 M. 1935 ft. Side Tracks. | | |
| | Depot | frame | 26x81 |
| | Tank, pump hse., wind mill, &c. Water from well. | | |
| | Stock yards | | 160x210 |
| Thummel | 3516 ft. Side Tracks. | | |
| | No buildings. | | |
| Sand Spur | 1224 ft. Side Tracks. | | |
| | No buildings. | | |
| Central City | 1 M. 3139 ft. Side Tracks. | | |
| | Depot | frame | 25x92 |
| | Section house | " | 24x24 |
| | Stock yards | | 64x192 |
| | " " | | 64x330 |
| | Tank, pump hse., wind mill, &c Water from well. | | |
| Paddock | 3310 ft. Side Tracks. | | |
| | Section house | frame | 24x24 |
| Chapman | 3300 ft. Side Tracks. | | |
| | Depot | | 25x90 |
| | Stock yards | | 64x128 |
| Lockwood | 2453 ft. Side Tracks | | |
| | Stock yards | | 64x128 |
| | Section house | | 24x24 |
| Grand Island | 19 M. 3981 ft. Side Tracks. | | |
| | Pass. Depot | Stn & Brk | 30x116 |
| | Coal house | frame | 18x41 |
| | Ice house | " | 12x16 |
| | Despatcher's office | " | 26x80 |
| | Freight house | " | 30x100 |
| | Ice house | " | 26x81 |
| | Track scales | | 42 ft. long |
| | Stock yards | | 57x136 |

| | | | |
|---|---|---|---|
| | Section house | frame | 24x24 |
| | Coal chute | ..... | 40 pockets |
| | Sand house | " | 20x40 |
| | Oil house | brick | 20x40 |
| | Office | frame | 18x32 |
| | Addn | frame | 12x16 |
| | Track scale at Sugar Wks | ..... | 42 ft. |
| | Stock yards | ..... | 215x242 |
| | Tank, &c. | | |
| | Water from city mains. | | |
| | Boiler house | frame | 16x30 |
| | Ice house | frame | 31x128 |
| | Interlocking & Signaling Plant. | | |
| | Machine shop | stone | 100x150 |
| | Addn | " | 50x50 |
| | Car shop | " | 165x250 |
| | Addn | brick | 14x14 |
| | Blacksmith shop | stone | 75x150 |
| | Paint shop | frame | 16x52 |
| | 25 stalls round house | Stn & Brk | |
| | 60 ft. turntable. | | |
| | Hotel | frame | 35x100 |
| | Addn | " | 35x51 |
| | Kitchen | " | 32x45 |
| | Ice house | " | 16x28 |
| | Coal house | " | 18x41 |
| Alda | 4501 ft. Side Tracks. | | |
| | Depot | frame | 20x40 |
| | Section house | " | 26x26 |
| | Stock yards | ..... | 64x104 |
| Sugar Beet Spur | 1100 ft. Side Tracks | | |
| | No buildings. | | |
| Wood River | 1 M. 1025 ft. Side Tracks. | | |
| | Depot | frame | 24x70 |
| | Tank, & Wind Mill, Pump house, &c. | | |
| | Water from well. | | |
| | Stock yards | ..... | 64x222 |
| Shelton | 1 M. 37 ft. Side Tracks. | | |
| | Depot | frame | 24x60 |
| | Section house | " | 24x24 |
| | Stock yards | ..... | 64x256 |
| Gibbon | 1 M. 1503 ft. Side Tracks. | | |
| | Depot | frame | 25x80 |
| | Section house | " | 24x24 |
| | Stock yards | ..... | 64x296 |
| | Tank & Wind Mill. Water from well. | | |
| Buda | 3706 ft. Side Tracks | | |
| | Depot | frame | 30x70 |
| | Section house | " | 24x24 |
| | Stock yards | ..... | 64x128 |
| Kearney | 3 M 3280 ft. Side Tracks. | | |
| | Depot | Stn & Brk | 28x116 |
| | Freight depot | frame | 30x100 |
| | Section house | frame | 24x24 |
| | Tank, & wind mill. Water from well. | | |
| | Stock yards | ..... | 116x212 |
| | Track scales | ..... | 36 ft. |
| | Car repair house | " | 14x20 |
| West Kearney | 1 M. 2979 ft. Side Tracks. | | |
| | Depot | brick. | 22x50 |
| Stevenson | 3021 ft. Side Tracks. | | |
| | Section house | frame | 24x24 |
| | Stock yards | ..... | 64x116 |

| | | | |
|---|---|---|---|
| Odessa | 2554 ft. Side Tracks. | | |
| | Depot | frame | 12x28 |
| | Stock yards | | 64x128 |
| Elm Creek | 4199 ft. Side Tracks. | | |
| | Depot | frame | 24x64 |
| | Stock yards | | 64x194 |
| | Tank & wind mill. | | |
| | Water from well. | | |
| Simonds | 2462 ft. Side Tracks. | | |
| | No buildings. | | |
| Overton | 3553 ft. Side Tracks. | | |
| | Depot | frame | 20x52 |
| | Section house | " | 24x24 |
| | " " | " | 24x24 |
| | Stock yards | | 115x138 |
| Josselyn | 3480 ft. Side Tracks. | | |
| | Section house | | 24x24 |
| Lexington | 1 M. 4881 ft. Side Tracks. | | |
| | Depot | frame | 25x90 |
| | Section house | " | 24x24 |
| | Stock yards | | 128x128 |
| | Coal chute | | 20 Pock |
| | Tank, pump house, &c. | | |
| | Water from well. | | |
| Markel | 3027 ft. Side Tracks. | | |
| | No buildings. | | |
| Cayote | 3362 ft. Side Tracks. | | |
| | Section house | frame | 24x24 |
| Cozad | 1 M. 243 ft. Side Tracks | | |
| | Depot | " | 24x66 |
| | Section house | " | 24x24 |
| | Stock yards | | 64x128 |
| Willow Island | 3374 ft. Side Tracks. | | |
| | Section house | " | 24x24 |
| | Stock yards | | 64x128 |
| | Tank & Wind Mill, &c. | | |
| | Water from well. | | |
| Gothenburg | 1 M. 3825 ft. Side Tracks. | | |
| | Depot | " | 20x40 |
| | Stock yards | | 64x128 |
| Vroman | 2553 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| Brady Island | 4816 ft. Side Tracks. | | |
| | Depot | " | 24x40 |
| | Section house | " | 24x24 |
| | Stock yards | | 137x175 |
| | Tank, wind mill, pump house, &c. | | |
| | Water from well. | | |
| Hindrey | 2962 ft. Side Tracks. | | |
| | No buildings. | | |
| Maxwell | 3727 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x26 |
| | Stock yards | | 64x128 |
| Gannet | 3392 ft. Side Tracks. | | |
| | Section house | " | 24x24 |
| | Watchman's house | " | 24x26 |
| North Platte | 10 M. 5226 ft. Side Tracks. | | |
| | Pass. depot (see below) | " | (in hot |
| | Section house | " | 24x24 |
| | Addn | " | 12x16 |
| | Coal chute | | 32 pock |
| | Track scales | | 45 ft. |

| | | | |
|---|---|---|---|
| | Ice house | frame | 31x128 |
| | Asst. Supt. Office | " | 32x40 |
| | Sand house | " | 14x20 |
| | Sand bin | " | 25x56 |
| | Oil house | Stn & Brk | 19x28 |
| | Tank, &c. | | |
| | Water from well. | | |
| | Coal house | frame | 13x38 |
| | B. & B. Office & Carp. shop | " | 18x32 |
| | B. & B. Store room | " | 12x16 |
| | Ice house | " | 24x100 |
| | Freight house | " | 30x100 |
| | Section house | " | 26x26 |
| | Car rep & coal storage | " | 16x62 |
| | Ice house | " | 37x177 |
| | Machine shop | brick | 100x152 |
| | Boiler shop | " | 50x125 |
| | Engine & boiler house | " | 34x44 |
| | Iron Supply house | frame | 24x30 |
| | Store house | brick | 37x57 |
| | Blacksmith shop | " | 75x101 |
| | Addn | " | 22x30 |
| | M. P. & C. offices | frame | 20x40 |
| | Round house—25 stalls | brick | |
| | Turntable | ..... | 60 ft. |
| | Pass. depot & hotel | frame | 35x135 |
| | Addn | " | 36x75 |
| | Laundry | " | 20x48 |
| | Refrigerator | " | 12x14 |
| | Stable | " | 14x20 |
| | Coal house | | 16x39 |
| Pallas | 4014 ft. Side Tracks | | |
| | No buildings. | | |
| Spuds | 799 ft. Side Tracks. | | |
| | No buildings. | | |
| Nichols | 3011 ft. Side Tracks | | |
| | Section house | frame | 26x26 |
| Hershey | 4216 ft. Side Tracks. | " | 22x50 |
| | Depot | ..... | 64x70 |
| | Stock yards | | |
| | Tank, wind mill, &c. | | |
| | Water from well. | " | 26x26 |
| | Section house | | |
| Sutherland | 4148 ft. Side Tracks. | " | 22x50 |
| | Depot | ..... | 64x128 |
| | Stock yards | | |
| Dexter | 3429 ft. Side Tracks. | | |
| | No buildings. | | |
| Paxton | 4898 ft. Side Tracks. | frame | 24x48 |
| | Depot | ..... | 64x128 |
| | Stock yards | | |
| | Tank, wind mill, pump hse., &c. | | |
| | Water from well. | | |
| Korty | 3427 ft. Side Tracks. | | |
| | No buildings | | |
| Roscoe | 2989 ft. Side Tracks. | frame | 26x26 |
| | Section house | | |
| Ogallala | 1 M. 2023 ft. Side Tracks. | " | 24x70 |
| | Depot | " | 26x26 |
| | Section house | " | 15x30 |
| | Bunk house | ..... | 144x144 |
| | Stock yards | | |
| | Tank, wind mill, p'mp hse. &c. | | |

| | | | |
|---|---|---|---|
| Plano | 3309 ft. Side Tracks. | | |
| | No buildings. | | |
| Brule | 3071 ft. Side Tracks. | | |
| | Section house | frame | 26x26 |
| Bevier | 3456 ft. Side Tracks. | | |
| | No buildings. | | |
| Big Springs | 4532 ft. Side Tracks. | | |
| | Depot | " | 24x48 |
| | Section house | " | 24x24 |
| | Stock yards | | 64x12 |
| | Tank & wind mill, &c. | | |
| | Water from well. | | |
| | Bunk house | frame | 16x31 |
| | " " | " | 14x24 |
| Barton | 2780 ft. Side Tracks. | | |
| | No buildings. | | |
| Julesburg | 3 M. 983 ft. Side Tracks. | | |
| | Depot | " | 24x90 |
| | Tank, pmp hse., wind mill, &c. | | |
| | Water from well | | |
| | Coal chute | " | 28 po |
| | Tenement house | " | 20x30 |
| | Addn | " | 12x14 |
| | Section house | " | 26x26 |
| | Addn | " | 18x24 |
| | Bunk house | " | 15x17 |
| | " " | " | 14x42 |
| | Stable | " | 16x44 |
| | Round house—2 stalls | " | |
| Wier | 3483 ft. Side Tracks. | | |
| | Section house | " | 24x24 |
| Ralton | 3340 ft Side Tracks. | | |
| | No buildings. | | |
| Chappell | 3181 ft. Side Tracks. | | |
| | Depot | " | 24x60 |
| | Section house | " | 26x26 |
| | Stock yards | | 64x80 |
| | Tank, wind mill, &c. | | |
| | Water from well | | |
| Perdu | 3448 ft. Side Tracks. | | |
| | No buildings. | | |
| Lodge Pole | 4302 ft. Side Tracks. | | |
| | Depot | " | 24x75 |
| | Section house | " | 26x26 |
| | Stock yards | | 64x18 |
| | Tank wind mill, pmp. hse., &c. | | |
| | Water from well. | | |
| Sunol | 3335 ft. Side Tracks. | | |
| | No buildings. | | |
| Colton | 2857 ft. Side Tracks. | | |
| | Section house | " | 24x24 |
| Sidney | 4 M. 3790 ft. Side Tracks. | | |
| | Pass. depot | stone | 30x10 |
| | Tel. office | frame | 24x48 |
| | M. P. & C. office | " | 14x20 |
| | Sand house | " | 14x20 |
| | Sand bin | " | 24x32 |
| | Tank, pump house, &c. | | |
| | Water from well. | | |
| | Stock yards | | 110x11 |
| | Section house | frame | 26x26 |
| | Car repairer's hse | " | 18x30 |
| | Addn | " | 14x24 |

| | | | |
|---|---|---|---|
| | Freight house | frame | 36x83 |
| | Coal chute | ..... | 24 pockets |
| | Car repairer's hse | " | 14x26 |
| | Ice house | " | 31x108 |
| | Section house | " | 24x33 |
| | Oil house | ..... | 16x62 |
| | Bunk house | frame | 12x38 |
| | Round house—10 stalls | brick | |
| | Turntable | ..... | 54 ft. |
| | Hotel | frame | 28x94 |
| | Addn | " | 28x44 |
| | Laundry | ..... | 25x50 |
| | Wood house | " | 16x40 |
| | Refrigerator | ..... | 12x14 |
| Margate | 3376 ft. Side Tracks. | | |
| | No buildings. | | |
| Brownson | 2637 ft. Side Tracks. | | |
| | Section house | frame | 16x28 |
| | Addn | " | 12x16 |
| Herdon | 3452 ft. Side Tracks. | | |
| | No buildings. | | |
| Potter | 4159 ft. Side Tracks. | | |
| | Depot | frame | 20x44 |
| | Section house | " | 26x26 |
| | Stock Yards | ..... | 64x80 |
| | Tank, wind mill, &c. | | |
| | Water from well. | | |
| Jacinto | 3457 ft. Side Tracks. | | |
| | No Buildings. | | |
| Dix | 3262 ft. Side Tracks. | | |
| | Section house | frame | 27x28 |
| Owasco | 3462 ft. Side Tracks. | | |
| | No. buildings. | | |
| Kimball | 4009 ft. Side Tracks. | | |
| | Depot | frame | 24x75 |
| | Section house | " | 27x27 |
| | Stock yards | ..... | (86x112) |
| | | | (65x128) |
| | Tank, pump hse., &c. | | |
| | Water from creek. | | |
| Adams | 2512 ft. Side Tracks. | | |
| | No buildings. | | |
| Bushnell | 2863 ft. Side Tracks | | |
| | Section house | frame | 24x26 |
| | Addn | " | 18x18 |
| | Tank, wind mill, &c. | | |
| Tioga | 3417 ft. Side Tracks. | | |
| | No buildings. | | |
| Pine Bluffs | 3234 ft. Side Tracks. | | |
| | Depot | frame | 24x48 |
| | Section house | " | 27x27 |
| | Stock yards | ..... | 175x192 |
| | Tank, wind mill, &c. | | |
| | Water from well. | | |
| | Coal chute 6 pockets. | | |
| Tracy | 2490 ft. Side Tracks. | | |
| | No buildings. | | |
| Egbert | 3130 ft. Side Tracks. | | |
| | Depot | frame | 16x36 |
| | Section house | " | 24x24 |
| | Tank, wind mill, &c. | | |
| | Water from well. | | |
| Burns | 2412 ft. Side Tracks. | | |

| | | | |
|---|---|---|---|
| | No buildings. | | |
| Hillsdale | 1 M. 39 ft. Side Tracks | | |
| | Depot | frame | 24x48 |
| | Section house | " | 24x27 |
| | Stock yards | | 43x86 |
| | Tank, pump house, &c. | | |
| | Water from well. | | |
| Atkins | 2705 ft. Side Tracks. | | |
| | Section house | frame | 25x40 |
| | Tank, pump house, &c. | | |
| | Water from well. | | |
| Archer | 1 M. 463 ft. Side Tracks. | | |
| | Depot | " | 16x48 |
| | Section house | " | 28x32 |
| | Stock yards | | 49x52 |
| East Cheyenne | 592 ft. Side Tracks. | | |
| Cheyenne | 22 M. 1245 ft. Side Tracks. | | |
| | Pass. Depot | stone | 54x220 |
| | Freight depot | frame | 35x156 |
| | Coal chute | " | 48 pock |
| | Sand house | brick | 23x30 |
| | Sand bin | frame | 30x30 |
| | Tank, pipe line, &c. | | |
| | Water from city main. | | |
| | Track scales | | 34 ft. |
| | Store house | frame | 16x26 |
| | " " | " | 24x96 |
| | Ice house | " | 24x100 |
| | " " | " | 30x120 |
| | Tenement house | " | 18x40 |
| | Addn | " | 12x12 |
| | Addn | " | 10x12 |
| | Tenement house | " | 21x25 |
| | Addn | " | 10x15 |
| | Addn | " | 10x18 |
| | Tenement house | " | 17x32 |
| | Addn | " | 10x24 |
| | Tenement house | " | 18x38 |
| | Addn | " | 6x19 |
| | Addn | " | 11x12 |
| | Section house | " | 24x24 |
| | Addn | " | 10x13 |
| | Section house | " | 17x26 |
| | Addn | " | 23x26 |
| | Bunk house | " | 10x14 |
| | Stable | " | 16x20 |
| | Yardmaster's office | " | 16x20 |
| | Stock yards | " | 208000 sq |
| | (About 1-3 of which belongs to the U. P. Ry. Co.) | | |
| | Oil house | St.&B. | 27x38 |
| | Machine shop | brick | 125x222 |
| | Addn | " | 50x133 |
| | Boiler shop | stone | 104x152 |
| | Addn | " | 46x46 |
| | Copper & Tin shop | " | 53x76 |
| | Transfer stable | iron | 60x283 |
| | Blacksmith shop | brick | 80x262 |
| | Addn | " | 20x28 |
| | Paint shop | brick | 150x191 |
| | Addn | " | 30x60 |
| | Addn | " | 12x18 |
| | Transfer table | steel | 60x298 |

| | | | |
|---|---|---|---|
| | Car erecting shop | brick | 95x275 |
| | Wood working shop | " | 80x200 |
| | Addn | " | 50x80 |
| | Coal bin | frame | 22x35 |
| | Lavatory | brick | 20x39 |
| | Lumber dryer | frame | 18x77 |
| | Ice house | " | 30x40 |
| | Car repair shop | brick | 72x202 |
| | M. M. Office | " | 45x80 |
| | Store house | frame | 12x24 |
| | Hose house | " | 22x30 |
| | Turntable at rep. shop. | | |
| | Iron racks, scrap sheds, &c. | | |
| | Electric Light plant. | | |
| | Steam heating plant. | | |
| | Water and sewerage systems | | |
| | Round house—20 stalls | stone | |
| | " " —10 " | brick | |
| | Turntable | iron | 60 ft. |
| Corlett | 4333 ft. Side Tracks. | | |
| | Depot | frame | 24x44 |
| | Section house | " | 26x26 |
| | Tenement house | " | 14x20 |
| | Tank, pump house, pump, &c. | | |
| | Water from spring. | | |
| Borie | 3615 ft. Side Tracks. | | |
| | Section house | frame | 26x26 |
| Otto | 3814 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| | Stand pipe. | | |
| | Tank, pump house, pump, &c. | | |
| | Water from spring. | | |
| Granite Canon | 4025 ft. Side Tracks. | | |
| | Depot | frame | 24x48 |
| | Section house | " | 26x26 |
| | Bunk house | " | 12x32 |
| | Stand pipe. | | |
| | Tank, pump hse., pump, &c. | | |
| | Water from spring. | | |
| Buford | 4158 ft. Side Tracks. | | |
| | Depot | frame | 16x18 |
| | Section house | " | 24x24 |
| | Tank, pump hse., pump, &c. | | |
| | Water from spring. | | |
| Ballast Siding | 1 M. 3643 ft. Side Tracks. | | |
| | No buildings. | | |
| Sherman | 1 M. 3917 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 16x38 |
| | Tank, pump hse., pump, &c. | | |
| | Water from spring. | | |
| Dale Creek | Tenement house | frame | 16x24 |
| | Tank, pump hse., pump, &c. | | |
| | Water from creek. | | |
| Tie Siding | 1 M. 529 ft. Side Tracks | | |
| | Depot | frame | 20x44 |
| | Section house | " | 24x24 |
| Harney | 3410 ft. Side Tracks. | | |
| | No buildings. | | |
| Red Buttes | 1 M. 5027 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x26 |
| | Bunk house | " | 20x40 |

| | | | |
|---|---|---|---|
| | Oil house | frame | 12x16 |
| | Sand house | " | 12x16 |
| | Water column. | | |
| | Tank, pump hse., &c. | | |
| | Water from creek. | | |
| | Round house—2 stalls | frame | |
| Sanders | 4096 ft. Side Tracks. | | |
| | Section house | | 24x36 |
| Laramie | 13 M. 2110 ft. Side Tracks. | | |
| | Freight depot | frame | 30x104 |
| | Sand house | " | 12x30 |
| | Sand bin | " | 14x100 |
| | Tank, pipe line, &c. | | |
| | Water from spr'g by gravity. | | |
| | Blacksmith shop | stone | 76x102 |
| | Machine shop | " | 76x126 |
| | Addn | " | 32x40 |
| | Iron supply house | " | 35x45 |
| | Supply house | frame | 30x52 |
| | Coal bin | " | 22x55 |
| | Store house | " | 16x16 |
| | Paint house | stone | 29x40 |
| | Addn | frame | 12x16 |
| | Car rep. shop | " | 29x147 |
| | Addn | " | 14x27 |
| | Addn | " | 9x63 |
| | Store house | " | 18x20 |
| | M. M. office | " | 20x40 |
| | Car rep. oil house | " | 18x80 |
| | Round house—20 stalls | stone | |
| | Turntable | iron | 60 ft. |
| | Hotel | frame | 36x176 |
| | Addn | " | 22x22 |
| | Laundry | " | 30x30 |
| | Coal house | " | 10x65 |
| | Stable | " | 10x19 |
| | Shed | " | 13x46 |
| | Oil house | stone | 20x28 |
| | Supt's office | frame | 31x38 |
| | Coal chute | | 60 pockets |
| | Coal bins & platforms | | |
| | Yardmaster's office | frame | 16x18 |
| | Ice house | " | 26x60 |
| | Track scales | | 42 ft. |
| | Stock yards | | 102000 sq ft |
| | Stock yards | | 21000 sq. ft |
| | Stable | frame | 15x52 |
| | " | " | 20x20 |
| | Battery House | " | 20 ft. diam. |
| | Express & baggage room | | 20x52 |
| | Addn | frame | 18x24 |
| | Addn | " | 16x18 |
| | Tenement house | " | 24x32 |
| | Addn | " | 8x13 |
| | Addn | " | 15x20 |
| | Addn | " | 10x15 |
| | Stable | " | 17x24 |
| | Tenement house | " | 18x24 |
| | Addn | " | 16x24 |
| | Tenement house | " | 28x32 |
| | Addn | " | 14x22 |
| | Addn | " | 12x15 |
| | Tenement house | " | 24x24 |

| | | | |
|---|---|---|---|
| | Tenement house | frame | 14x24 |
| | Addn | " | 14x17 |
| | Tenement house | " | 28x36 |
| | " " | " | 20x48 |
| | Addn | " | 14x15 |
| | Tenement house | " | 16x38 |
| | " " | " | 16x28 |
| | " " | " | 18x30 |
| | " " | concr. | 22x30 |
| | " " | frame | 26x26 |
| | " " | " | 18x24 |
| | " " | " | 16x18 |
| | Addn | brick | 20x24 |
| | Tenement house | frame | 16x18 |
| | Addn | " | 18x35 |
| | Section house | " | 10x16 |
| | Addn | | |
| | LARAMIE SODA WORKS. | | |
| | Boiler & Pump hse | frame | 25x40 |
| | Addn | " | 9x9 |
| | Tank & tower | " | 22x24 |
| | Lixiviating house | " | 20x22 |
| | Causticiser | " | 18x68 |
| | Addn | " | 9x26 |
| | Addn | " | 28x22 |
| | Addn | " | 52x91 |
| | Dry house | " | 12x20 |
| | Superintendent's house | " | 25x36 |
| | Mixing room | " | 14x37 |
| | Bunk house | " | 16x40 |
| | Lye house | " | 15x20 |
| | Laboratory | " | 56x84 |
| | Revolver house | " | 25x40 |
| | Black ball house | " | 44x217 |
| | Furnace house | " | 7x21 |
| | Addn | " | 21x53 |
| | Addn | " | 27x44 |
| | Tub room | " | 10x18 |
| | Addn | | |
| | LARAMIE ROLLING MILLS. | | |
| | Main building | stone | 115x235 |
| | Hot bed | frame | 60x83 |
| | Blacksmith shop | brick | 22x40 |
| | Boiler shed | frame | 26x48 |
| | Machine shop | stone | 35x58 |
| | Furnace shed | " | 47x68 |
| | Office | frame | 15x29 |
| | Rail shed | " | 33x38 |
| | Carpenter shop | " | 21x45 |
| | Store house | " | 49x1000 |
| | Engine house | " | 18x25 |
| Howells | 2597 ft. Side Tracks. | | |
| | Section house | frame | 26x26 |
| Wyoming | 1 M. 909 ft. Side Tracks. | | |
| | Depot | " | 24x48 |
| | Section house | " | 26x26 |
| | Tank, pump hse., &c. | | |
| | Water from river. | | |
| Huttons | 4184 ft. Side Tracks. | | |
| | Depot | " | 12x20 |

| | | | |
|---|---|---|---|
| | Section house | frame | 26x26 |
| | Stock yards | | 119x204 |
| Cooper Lake | 3553 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| | Tenement house | " | 16x16 |
| | Addn | log. | 28x32 |
| | Stable | " | 12x32 |
| | Corral | | 40x65 |
| | Tank, pump hse., &c. | | |
| | Water from river. | | |
| Lookout | 1 M. 1522 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 17x34 |
| Harpers | 3663 ft. Side Tracks. | | |
| | Depot | " | 12x20 |
| | Section house | " | 16x28 |
| | Addn | " | 13x16 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| Miser | 3398 ft. Side Tracks. | | |
| | Section house | " | 24x26 |
| Rock Creek | 1 M. 3848 ft. Side Tracks. | | |
| | Depot | " | 24x74 |
| | Section house | " | 26x26 |
| | Tenement house | " | 26x28 |
| | Stock yards | " | 204x240 |
| | Tank, pump hse., &c. | | |
| | Water from Creek. | | |
| Wilcox | 2564 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| Aurora | 3255 ft. Side Tracks. | | |
| | Depot | " | 24x50 |
| | Section house | " | 26x26 |
| | Tank, pump hse., &c. | | |
| | Water from spring. | | |
| Tie Track No. 2 | 1456 ft. Side Tracks. | | |
| | No buildings. | | |
| Medicine Bow | 4 M. 3734 ft. Side Tracks. | | |
| | Depot | frame | 20x60 |
| | Section house | " | 26x26 |
| | Tenement house | " | 16x18 |
| | " " | " | 20x22 |
| | Addn | " | 16x43 |
| | Tenement house | " | 15x24 |
| | Coal chute | | 32 pockets |
| | Stock yards | | 100500 sq.ft. |
| | Tank, pump hse., &c. | | |
| | Water from creek. | | |
| | Sand house | " | 14x18 |
| | Round house—5 stalls | stone | |
| Allen | 5120 ft. Side Tracks. | | |
| | Depot | frame | 24x60 |
| | Section house | " | 20x50 |
| | Stable | " | 11x21 |
| Pyncheon | 2931 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| Carbon | 6 M. 430 ft. Side Tracks. | | |
| | Depot | " | 24x70 |
| | Section house | " | 16x28 |
| | Addn | " | 12x16 |
| | Tenement house | " | 16x24 |
| | Addn | " | 16x18 |
| | Pump Repairer's hse | " | 18x30 |

| | | | |
|---|---|---|---|
| | Tank—Water from Rattlesnake Creek W. Co. | | |
| Simpson | 1 M. 212 ft. Side Tracks. | | |
| | Telegraph Office | frame | 14x16 |
| | Addn | " | 10x14 |
| | Section house | " | 26x26 |
| Percy | 3652 ft. Side Tracks. | | |
| | Bunk house | " | 16x32 |
| | Section house | " | 26x26 |
| Weed | 1768 ft. Side Tracks. | | |
| | Tank—Water from Rattlesnake Creek W. Co. | | |
| Dana | 5057 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 28x36 |
| | Tank—Water from R. S. Creek W. Co. | | |
| Edson | 2595 ft. Side Tracks. | | |
| | Section house | " | 24x32 |
| Mile 166 | | | |
| | Watchman's house | " | 11x13 |
| Walcott | 3940 ft. Side Tracks. | | |
| | Section house | " | 20x36 |
| | Addn | " | 12x18 |
| | Stock yards | | 57x64 |
| Ft. Steele | 1 M. 3277 ft. Side Tracks. | | |
| | Depot | " | 24x50 |
| | Section house | " | 26x26 |
| | Tenement house | " | 24x24 |
| | Tank, pump hse., &c. | | |
| | Water from River. | | |
| | Round house—2 stalls | frame | |
| Greenville | 3393 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| Rawlins | 9 M. 2917 ft. Side Tracks. | | |
| | Pass. depot | frame | 24x87 |
| | Freight house | " | 30x100 |
| | Addn | " | 30x60 |
| | Oil house | " | 10x15 |
| | Coal chute | " | 60 pockets |
| | Coal house | " | 30x162 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| | Yardmaster's office | | 14x18 |
| | Oil house | stone | 20x29 |
| | Wool house | frame | 25x70 |
| | Track Scales | | 34 feet. |
| | Stock yards | | 47300 sq.ft. |
| | Bunk house | " | 14x20 |
| | Tenement house | " | 16x42 |
| | Addn | " | 17x18 |
| | Tenement house | " | 16x27 |
| | " " | " | 24x24 |
| | Addn | " | 14x38 |
| | Tenement house | " | 16x32 |
| | Addn | " | 13x14 |
| | Tenement house | " | 16x26 |
| | Addn | " | 16x24 |
| | Tenement house | " | 22x37 |
| | Addn | " | 18x24 |
| | Section house | " | 26x26 |
| | Machine shop | stone | 76x80 |
| | Addn | " | 31x36 |
| | Hose house | frame | 12x16 |

| | | | |
|---|---|---|---|
| | Stone house | frame | 30x75 |
| | M. M. Office & Son | " | 30x70 |
| | Carpenter shop | " | 16x52 |
| | " " | " | 30x100 |
| | Office | " | 16x45 |
| | Store house | " | 27x47 |
| | Oil & Ice house | " | 20x65 |
| | Round house—20 stalls | frame | |
| | Turntable | iron | 60 feet. |
| | Hotel | frame | 35x67 |
| | Addn | " | 28x44 |
| Solon | 2871 ft. Side Tracks. | | |
| | Depot | frame | 20x36 |
| | Addn | " | 12x18 |
| | Section house | " | 26x26 |
| | Addn | " | 13x18 |
| O'Neill | 300 ft. Side Tracks. | | |
| | No buildings. | | |
| Riner | 3614 ft. Side Tracks. | | |
| | Section house | frame | 20x36 |
| | Addn | " | 12x18 |
| Fillmore | 3880 ft. Side Tracks. | | |
| | Telegraph office | " | |
| | Section house | " | 26x26 |
| | Tenement house | " | 20x24 |
| | Chinese Sec. house | " | 14x28 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| Creston | 3680 ft. Side Tracks. | | |
| | Depot | frame | 24x30 |
| | Section house | " | 26x26 |
| | " " Chinese | " | 12x26 |
| Latham | 3799 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| | " " Chinese | " | 14x30 |
| Wamsutter | 2 M. 2889 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x26 |
| | Tenement house | " | 26x26 |
| | Coal chute | " | 20 pocket |
| | Bunk house | " | 16x40 |
| | Tank, pump house, &c. | | |
| | Water from well. | | |
| | Round house—2 stalls | " | |
| Frewen | 3319 ft. Side Tracks. | | |
| | No buildings. | | |
| Red Desert | 3650 ft. Side Tracks. | | |
| | Coal house | frame | 30x100 |
| | Section house | " | 20x26 |
| | Addn | " | 10x16 |
| | Section house, Chinese | " | 14x20 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| Tipton | 1 M. 1743 ft. Side Tracks. | | |
| | Depot | frame | 16x22 |
| | Addn | " | 9x12 |
| | Section house | " | 16x32 |
| | Addn | " | 16x16 |
| | Section house, Chinese | " | 12x26 |
| Table Rock | 3679 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| Monell | 3521 ft. Side Tracks. | | |
| | No buildings. | | |

| | | | |
|---|---|---|---|
| Bitter Creek | 1 M. 4275 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x26 |
| | Stock yards | | 130x320 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| Patrick | 3307 ft. Side Tracks. | | |
| | No buildings. | | |
| Black Buttes | 3647 ft. Side Tracks. | | |
| | Telegraph Office | frame | 12x26 |
| | Section house | " | 26x26 |
| Hallville | 4035 ft. Side Tracks. | | |
| | Section house | " | 22x33 |
| | | " | 12x16 |
| | Addn | " | 14x26 |
| | Section house Chinese | | |
| Point of Rocks | 4637 ft. Side Tracks. | | |
| | Depot | frame | 24x70 |
| | Section house | " | 26x26 |
| | Powder hse | dugo't | 14x16 |
| | Tank, pump hse., &c. | | |
| | Water from well. | | |
| Thayer | 3910 ft. Side Tracks. | | |
| | Section house | frame | 26x26 |
| Salt wells | 3823 ft. Side Track. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x26 |
| Baxter | 3639 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| | " " Chinese | " | 12x25 |
| Vandyke | 5069 ft. Side Tracks. | | |
| | No buildings. | | |
| Rock Springs | 25 M. 260 ft. Side Tracks. | | |
| | Depot | " | 24x111 |
| | Section house | " | 26x26 |
| | " " | " | 26x26 |
| | " " Chinese | " | 12x25 |
| | Tenement house | " | 16x24 |
| | Addn | " | 23x26 |
| | Express Office | " | 16x24 |
| | Bunk house | " | 16x20 |
| | Car Rep. Shop | " | 13x15 |
| | Coal chute | | 10 pockets |
| | Sand shed | " | 12x30 |
| | Oil house | " | 21x27 |
| | Track scales | | 29 ft. |
| | " " | | 42 ft. |
| | Stock yards | | 46x48 |
| | Tank and stand pipe. | | |
| | Water from Gr. R. W. Co. | | |
| | Round house—4 stalls | frame | |
| Blairtown | 1 M. 3031 ft. Side Tracks. | | |
| | No buildings. | | |
| Sweetwater Mine | 4 M. 3739 ft. Side Tracks | | |
| | No buildings. | | |
| Wilkins | 4969 ft. Side Tracks. | | |
| | Telegraph office | frame | 14x30 |
| | Section house | " | 26x26 |
| Green River | 10 M. 4397 ft. Side Tracks. | | |
| | Pass. Depot | frame | 24x50 |
| | Freight Depot | " | 30x80 |
| | Dispatcher's office | " | 20x30 |
| | Oil house | " | 16x48 |
| | Track scales | " | 48 ft. |

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|---|---|---|---|
| | Hose house | frame | 10x16 |
| | Tank, Water from Gr. R. W. Wks. Co. | | |
| | Coal chute | " | 32 pockets |
| | Ice house | " | 31x101 |
| | Carpenter shop | " | 16x24 |
| | Sand house | " | 31x71 |
| | Stock yards | " | 74400 sq. ft. |
| | Ice house | " | 30x60 |
| | Coal house | " | 12x30 |
| | Bunk house | " | 16x24 |
| | Tenement house | " | 18x24 |
| | Addn | " | 14x18 |
| | Tenement house | " | 18x24 |
| | Addn | " | 14x18 |
| | Tenement house | " | 18x24 |
| | Addn | " | 14x18 |
| | Tenement house | " | 18x24 |
| | Addn | " | 14x18 |
| | Tenement house | " | 20x24 |
| | Addn | " | 14x18 |
| | Tenement house | " | 20x24 |
| | Addn | " | 11x16 |
| | Tenement house | " | 20x24 |
| | Addn | " | 11x16 |
| | Section house | " | 26x26 |
| | " " | " | 26x26 |
| | Machine shop | " | 40x70 |
| | Blacksmith shop | " | 38x44 |
| | Car repair shop | " | 35x145 |
| | Paint house | " | 10x16 |
| | M. M. office | " | 18x36 |
| | Boiler house | " | 26x34 |
| | Store house | " | 9x20 |
| | Oil house | " | 10x16 |
| | Round house—10 stalls | brick. | |
| | " " —15 stalls | stone. | |
| | Turntable | iron | 60 ft. |
| | Hotel | frame | 32x80 |
| | Addn | " | 34x78 |
| | Addn | " | 16x46 |
| | Servant's house | " | 20x44 |
| | Chinese house | " | 12x24 |
| | Refrigerator | " | 12x12 |
| | Stable | " | 13x31 |
| Peru | 5189 ft. Side Tracks. | | |
| | Depot | " | 16x20 |
| | Section house | " | 26x26 |
| | Bunk house | " | 13x17 |
| Bryan | 1 M. 1076 ft. Side Tracks. | | |
| | Depot | " | 24x50 |
| | Section house | " | 26x26 |
| Bryan Tank | No Side Track | | |
| | Tank, pump house &c. | | |
| | Water from creek. | | |
| Marston | 2843 ft. Side Tracks. | | |
| | Depot | frame | 16x21 |
| | Addn | " | 8x12 |
| | Section house | " | 17x24 |
| | Bunk house | " | 20x40 |
| Tie Tracks No 4 | 2747 ft. Side Tracks. | | |
| | No buildings | | |

| | | | |
|---|---|---|---|
| Granger | 4573 ft. Side Tracks. | | |
| | Depot (½ interest) | frame | 20x96 |
| | Section house | " | 20x36 |
| | Addn | " | 12x18 |
| | Bunk house | " | 16x28 |
| | Tank, pump house, &c. | | |
| | Water from creek. | | |
| | Tenement house | " | 12x24 |
| Church Buttes | 3622 ft. Side Tracks. | | |
| | Section house | frame | 20x36 |
| | Addn | " | 12x18 |
| | Tank, pump house, &c. | | |
| | Water from creek. | | |
| Hampton | 2374 ft. Side Tracks. | " | 18x24 |
| | Section house | " | 16x21 |
| | Section house Chinese | | |
| Carter | 3501 ft. Side Tracks. | " | 24x100 |
| | Depot | " | 26x26 |
| | Section house | | 84x98 |
| | Stock yards | " | 12x20 |
| | Bunk house | | |
| Bridger | 4634 ft. Side Tracks. | " | 24x50 |
| | Depot | | |
| | Tank pump house, &c. | | |
| | Water from creek. | | |
| Leroy | 1510 ft. Side Tracks. | " | 18x24 |
| | Section house | " | 17x21 |
| | " " Chinese | | |
| Piedmont | 1 M. 777 ft. Side Tracks. | " | 24x50 |
| | Depot | " | 26x26 |
| | Section house | " | 26x26 |
| | " " | " | 20x23 |
| | Tenement house | | |
| | Round house—2 stalls | frame | |
| | Bunk house | frame | 16x18 |
| | Coal house | " | 30x129 |
| | Tank, pump house, &c | | |
| | Water from well. | | |
| Tapioca | 1896 ft. Side Tracks. | | |
| | Watchman's house | frame | 16x23 |
| Aspen | 3418 ft. Side Tracks. | " | 20x44 |
| | Depot | " | 20x24 |
| | Section house | " | 10x12 |
| | Bunk house | " | 14x22 |
| | Section house, Chinese | | |
| | Tank, pump house, &c | | |
| | Water from well. | | |
| Hilliard | 3621 ft. Side Tracks. | " | 20x40 |
| | Depot | | 16x123 |
| | Wood platform | | 80x80 |
| | Stock yards | " | 26x26 |
| | Section house | " | 16x24 |
| | " " Chinese | | |
| Millis | 2318 ft. Side Tracks. | " | 25x25 |
| | Section house | | |
| Evanston | 5 M. 3209 ft. Side Tracks. | | |
| | Pass. depot | frame | 24x80 |
| | Freight depot | " | 35x107 |
| | Addn | " | 12x35 |
| | Asst. Supt's house | " | 22x28 |

| | | |
|---|---|---|
| Addn | frame | 16x18 |
| Car Supply house | " | 16x51 |
| Stock yards | " | 24000 sq. ft |
| Tank, pump house, &c. | | |
| Water from river. | | |
| Coal house | " | 18x125 |
| Section house | " | 26x26 |
| Addn | " | 16x18 |
| Addn | " | 15x21 |
| Section house | " | 26x26 |
| Ice house | " | 30x80 |
| Coal chute | " | 24 pockets |
| Tenement house | " | 20x30 |
| Addn | " | 16x18 |
| Addn | " | 8x11 |
| Tenement house | " | 20x30 |
| Addn | " | 10x14 |
| Tenement house | " | 20x30 |
| Addn | " | 10x20 |
| Tenement house | " | 20x30 |
| Addn | " | 16x20 |
| Addn | " | 14x25 |
| Tenement house | " | 20x30 |
| Addn | " | 10x20 |
| Tenement house | " | 24x24 |
| Addn | " | 12x14 |
| Tenement house | " | 24x24 |
| Addn | " | 10x20 |
| Tenement house | " | 24x24 |
| Addn | " | 10x12 |
| Tenement house | " | 24x24 |
| Addn | " | 10x12 |
| Tenement house | " | 18x27 |
| Addn | " | 13x18 |
| Addn | " | 9x17 |
| Coal bin | " | 14x44 |
| Coal bin | " | 14x49 |
| Track scales | " | 34 ft. long |
| Ice house | " | 32x410 |
| Carpenter shop | " | 20x60 |
| Boiler house | " | 31x35 |
| Addn | " | 10x11 |
| Blacksmith shop | " | 60x135 |
| Car shop | " | 30x144 |
| Addn | " | 12x24 |
| Oil house | " | 9x14 |
| Paint shop | " | 12x16 |
| M. M. Office | " | 20x40 |
| Hose house | " | 14x24 |
| Store house | " | 24x40 |
| Addn | " | 18x22 |
| Oil house(underground) | " | 18x89 |
| Sand house | " | 20x30 |
| Blacksmith shop | " | 41x60 |
| Round house—20 stalls | stone | |
| Turntable | iron | 55 ft. |
| Hotel | frame | 32x80 |
| Addn | " | 35x78 |
| " | " | 20x48 |
| " | " | 14x16 |
| Laundry | " | 16x34 |
| Refrigerator | " | 10x15 |
| Bunk house | " | 12x20 |

| | | | |
|---|---|---|---|
| | Stable | frame | 16x24 |
| | Coal house | " | 10x30 |
| | Car Reprs. office | " | 12x14 |
| | " shop | " | 10x12 |
| Almy Junction | 3 M. 2634 ft. Side Tracks. | | |
| | Depot | frame | 20x40 |
| | Section house | " | 25x52 |
| | Track scales | " | 42 ft. long |
| | Tenement house | " | 18x36 |
| | Addn | " | 14x26 |
| Wyuta | 1872 ft. Side Tracks. | | |
| | Section house | " | 18x48 |
| Wahsatch | 3145 ft. Side Tracks. | | |
| | Depot | " | 20x50 |
| | Section house | " | 26x26 |
| | Addn | " | 14x16 |
| | Stock yards | " | 63x122 |
| | Tank, stand pipe & reservoir. | | |
| | Water from spring. | | |
| | Wood platform | ..... | 14x113 |
| Spur | 593 ft. Side Tracks. | | |
| | No buildings. | | |
| Castle Rock | 4940 ft. Side Tracks. | | |
| | Depot | frame | 24x50 |
| | Section house | " | 26x36 |
| | " " Chinese | " | 12x24 |
| | Tank and windmill. | | |
| | Water from well. | | |
| Emery | 2819 ft. Side Tracks. | | |
| | Section house | " | 26x26 |
| | " " Chinese | " | 12x28 |
| | Tank—water from spring. | | |
| Echo | 2 M. 4605 ft. Side Tracks. | | |
| | Depot | " | 26x60 |
| | Section house | " | 26x26 |
| | " " | " | 26x26 |
| | Coal chute | " | 32 pockets |
| | Oil house | " | 16x20 |
| | Sand house | " | 12x14 |
| | Track scales | " | 30 ft. |
| | Tank, pump house, &c | | |
| | Water from river. | | |
| | Stock yards | ..... | 47x49 |
| | Round house—4 stalls | frame | |
| Henefer | No Side Tracks. | | |
| | No buildings. | | |
| Croyden | 3645 ft. Side Tracks. | | |
| | Section house | " | 20x36 |
| | Addn | " | 12x18 |
| Mile 485.7 | No Side Tracks. | | |
| | Watchman's house | " | 16x28 |
| Morgan | 3997 ft. Side tracks. | | |
| | Depot | " | 20x80 |
| | Section house | " | 24x26 |
| | Tank—Water from spring. | | |
| Peterson | 2663 ft. Side Tracks. | | |
| | Depot | frame | 20x75 |
| | Section house | " | 24x26 |
| Strawberry | No side Tracks. | | |
| | Tank—Water from spring. | | |
| Devil's Gate | 2444 ft. Side Tracks. | | |
| | Section house | frame | 26x48 |
| | Watchman's house | " | 12x20 |

| | | | |
|---|---|---|---|
| Unitah | Watchman's house | frame | 12x20 |
| | 2986 ft. Side Tracks. | | |
| | Depot | " | 24x26 |
| | Addn | " | 14x16 |
| | Coal bin | " | 11x47 |
| | Section house | " | 28x34 |
| | Bunk house | " | 24x26 |
| Ogden | 11 M. 1402 ft. Side Tracks. | | |
| | Coal chute | | 40 pockets |
| | Ice house | frame | 30x400 |
| | Coal bin | " | 16x40 |
| | Tank, pump house, water columns and pipe line. | | |
| | Water from city mains. | | |
| | Sand house | frame | 23x30 |
| | Oil house | brick | 20x28 |
| | Yardmaster's office | " | 16x26 |
| | Stock yards | | 34,400sq.ft. |
| | Track scales | | 40 ft. long |
| | Section house | frame | 24x35 |
| | Bunk house | " | 18x24 |
| | Round house—20 stalls | brick. | |
| | Turntable | iron | 60 ft. |
| | Car repair shop | frame | 20x42 |
| | Store house | " | 12x44 |
| | Hospital | brick. | 36x106 |

150. That the following schedule, marked "Schedule 4," is a more particular description of portions of the property above described, the record title of which stands in the name of trustees for the Union Pacific Railway Company, as therein shown, which property is included in the property of the Union Division of said railway.

## SCHEDULE 4.

## DOUGLAS COUNTY, NEBRASKA.

### City of Omaha.

| Description. | Acres. |
|---|---|
| Lots 5, 6 & 7 in Block F | 0.60 |
| Dexter, Atkins & Mink, Trustees. | |
| Lot 1 in Block 178 in the City of Omaha, as surveyed and lithographed, subject to the taxes thereon for the year 1886 | 0.20 |
| Atkins, Baker & McFarland, Trustees. | |
| All Lots numbers 2 and 3 in Block No. 178 in the City of Omaha | 0.40 |
| Atkins, Baker & McFarland, Trustees. | |

| Description. | Acres. |
|---|---|
| All the following described Real Estate, situated in the City of Omaha, County of Douglas and State of Nebraska, to-wit: Lots 5, 6, 7 & 8 in Block 178; Lots 6, 7 & 8 in Block 179; excepting however from this conveyance all the interest heretofore acquired by the Union Pacific Railway Company for Right of Way in and to Lots 6, 7 & 8 in Block 179 and the interest under a certain verbal lease heretofore made of Lots 5, 6, 7 & 8 in Blk. 178 to John A. Wakefield, which expires, Feb. 1, 1887. The whole of said described premises is hereby conveyed subject to all taxes assessed and levied thereon for the year 1886, &c ..... | 1.22 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 5 in Block 179 as surveyed and platted by the Council Bluffs and Nebraska Ferry Co ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot No. 5 in Block 180 in the City of Omaha ..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot No. 6 and 8 in Block 180 in the City of Omaha. | 0.40 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 4 in Block 181 ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| All Lots 1 & 4 in Block 188 in the City of Omaha. Also a parcel of land adjoining said Lot 1 on the East, commencing at the NE corner of said Lot 1 in Block 188 aforesaid; thence South 132 feet to the SE corner of said Lot 1; thence East 20 feet; thence North 133 ft.; thence west 20 ft. to place of beginning. Containing 2640 square feet ..... | 0.46 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lots 2 and 3 Block 188 in the City of Omaha... | 0.40 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 1, 2 & 3 Block 189 South of Right of Way of the U. P. Ry. containing $1\frac{3}{5}$ of a regular City lot.. | 0.32 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |

| Description. | Ac |
|---|---|
| All that portion of Lot 4 in Block 189 in the City of Omaha not included in a certain grant for Right of Way made to the Union Pacific Railroad Company by deed dated March 3, 1864, and recorded on the 21st day of the same month in Book "P" of deeds at Page 301 of the records of said Douglas County ... | 0 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Part of Lot 2 (being 6,534 sq. ft.) in Block 226 in the City of Omaha, according to the Recorded Plat thereof ..... | |
| Lots 7, 8, 9 & 10 in Block 15 and fractional Block 17 in the Town of Millard..... | 0 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lots 7, 8, 9 & 10 in Block 23 in the Town of Waterloo. | 0 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## DODGE COUNTY NEBRASKA.

| | |
|---|---|
| Lots 1 & 2 in Block C in the City of North Bend .... | |
| Lot 5 in Block 53 in the City of North Bend, except the East 15 feet of Lot ..... | 1 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## PLATTE COUNTY NEBRASKA.

### CITY OF COLUMBUS.

| | |
|---|---|
| Lot 3 & 4 in Block 41 ..... | 0 |
| DEXTER, ATKINS & MINK, TRUSTEE. | |
| Lot 7 in Block 58 ..... | 0 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3 & 4 in Block 59 ..... | 0 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 4 in Block 77 ..... | 0 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3 in Block 80 ..... | 0 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| Lot 1 & 2 in Block 86 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.40 |
| Lot 8 in Block 100 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 5 and 6 in Block 101 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.40 |
| Lot 7 in Block 102 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 3 & 4 in Block 110 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.40 |
| Lot 5 in Block 112 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 2 & 7 in Block 113 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.40 |
| Lot 7 & 8 in Block 121 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.40 |
| Lot 7 in Block 125 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 6 in Block 145 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 7 in Block 159 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 8 in Block 168 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 5 in Block 187 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 3 & 4 in Block 190 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.40 |
| Lot 7 in Block 195 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 1 in Block 199 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |

| Description. | Acres. |
|---|---|
| Lot 1 in Block 209 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 6 in Block 211 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 in Block 224 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 1 & 7 in Block 225 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 2 in Block 229 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 6 in Block 231 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3, 5 & 6 in Block 232 | 0.60 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 2 in Block 234 | 0.20 |
| DEXTER, ATKINS, & MINK, TRUSTEES. | |
| Lot 2 in Block 259 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Out Lot 7 | 11.65 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Out Lot 9 | 7.75 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| SE ¼ NW ¼ Sec. 20—17—1 W | 40.00 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## HALL COUNTY, NEBRASKA.

### CITY OF GRAND ISLAND.

| | |
|---|---|
| Lots 5, 6, 7 & 8 in Block 39 | 0.80 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lots 5, 6, 7 & 8 in Block 40 | 0.80 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lots 5, 6, 7 & 8 in Block 41 | 0.80 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| Lots 3, 4, 5 & 6 in Block 42 ..... | 0.80 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| First addition to Grand Island. | |
| Frac. Lot 7 in Block 105 ..... | 0.03 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## BUFFALO COUNTY, NEBRASKA.

KEARNEY JUNCTION.

| | |
|---|---|
| Lots 89, 602, 719 ..... | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| (Park) Lots 1398, 1399, 1400, 1404, 1405, & 1406 .... | 0.90 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lots 1477 ..... | 0.15 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## LARAMIE COUNTY, WYOMING.

CITY OF CHEYENNE.

| | |
|---|---|
| Fractional Lot No. 1 in Block 833; Also Lots 1, 2 & 3 and frac. Lots 4, 5, 6, 7 & 8 in Block 834. Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 835; All in Section 32, T. 14 N. R. 66 W.; Also lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 386; Also Lots No. 1, 2, 3, 4, 5, 6, 7 & 8 in Block 837; Also Lots No. 1, 2, 3, 4, 5, 6, 7 & 8 in Block 838; Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 839—All in Section 32, T. 24, N. R. 66 W., as designated on the official plat of Townsite of said City of Cheyenne ..... | 9.86 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 22 in Block 122, City of Laramie..... | 0.72 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

SODA LAKES, NEAR LARAMIE, WYO.

| | |
|---|---|
| SW of NW of NE ¼<br>NW of SW of NE ¼<br>E ½ of NW ¼<br>S ½ of SW of NW ¼<br>NE of SW of NW ¼ | 4-14 N-75 W. |

N ½ of NW of SW ¼ 5-14 N-75 W. NE of NE ¼ of SE ¼ 6-14 N-75 W. SE of SE of SW ¼ 33-15 N-75 W. Also all claim in and to other portions of Sec's 4 & 5, T. 14 N. R. 75-W. and in and to other portions of Sec. 33 T. 15 N. R. 75, which may have been at any time vested in those through whom above property was obtained ..... 200.00

DEXTER, ATKINS & MINK, TRUSTEES.

## WEBER COUNTY, UTAH.

A part of lot 6 in Block 4 in South Ogden Survey, beginning at the northwest corner of said lot 6 and running thence south 20 rods; thence east 10 rods; thence north 2½ rods; thence east 2 rods; thence north 17½ rods; thence west 12 rods to place of beginning ..... 1.47

ATKINS, DEXTER & LANE, TRUSTEES.

151. That the following schedule, marked "Schedule 5," is a more particular description of portions of the property above described as the present equipment of the Union Pacific Railway Company, showing certain particulars in relation to the conditions thereof, on December 31, 1896.

# SCHEDULE 5.

## THE UNION PACIFIC RAILWAY COMPANY.

*Particulars relating to the condition of the locomotive equipment, December 31, 1896, compared with the condition on October 13, 1893, the date of the appointment of the Receivers in the Ames case.*

| CONDITION | Number of Locomotives | | Percentage of Total | |
|---|---|---|---|---|
| | Dec. 31, 1896 | Oct. 13, 1893 | Dec. 31, 1896 | Oct. 13, 1893 |
| In service, in good working order | 368 | 328 | 68.91 | 61.43 |
| In service, needing general repairs | 61 | 47 | 11.42 | 8.80 |
| In service, needing light repairs | 31 | 62 | 58.1 | 11.61 |
| Total in service, needing repairs | 92 | 109 | 17.23 | 20.41 |
| Total in service | 460 | 437 | 86.14 | 81.84 |
| In shop, under general repairs | 33 | 83 | 6.18 | 15.54 |
| In shop, under light repairs | 8 | 11 | 1.50 | 2.06 |
| Total in shop | 41 | 94 | 7.68 | 17.60 |
| Vacancies to be filled | ..... | ..... | ..... | ..... |
| Unserviceable, but not dismantled | ..... | ..... | ..... | ..... |
| Too light for present traffic conditions | 8 | 3 | 1.50 | .56 |
| Not justifying expense of repairs | 25 | ..... | 4.68 | ..... |
| Total unserviceable | 33 | 3 | 6.18 | .56 |
| Leased to companies outside of Union Pacific System | ..... | ..... | ..... | ..... |
| Total Locomotive Equipment | 534 | 534 | 100.00 | 100.00 |

## THE UNION PACIFIC RAILWAY COMPANY.

*Particulars relating to the condition of the car equipment, December 31, 1896, compared with the condition on October 13, 1893, the date of the appointment of the Receivers in the Ames cause.*

| CONDITION | Number of | | Percentage of Total | |
|---|---|---|---|---|
| | Dec. 31, 1896 | Oct. 13, 1893 | Dec. 31, 1896 | Oct. 13, 1893 |
| PASSENGER CARS. (a) | | | | |
| IN SERVICE IN GOOD ORDER | (d)252 | 294 | 61.31 | 68.60 |
| OUT OF SERVICE— | | | | |
| Undergoing light repairs | ..... | 7 | ..... | 1.64 |
| Undergoing heavy repairs | 18 | 13 | 4.38 | 3.04 |
| Awaiting repairs | 30 | 1 | 7.30 | .23 |
| Total undergoing or awaiting repairs | 48 | 21 | 11.68 | 4.91 |
| Total available, exclusive of Sleeping and Dining Cars | 300 | 315 | 72.99 | 73.60 |
| Sleeping Cars, first class | 69 | 70 | 16.79 | 16.35 |
| Sleeping Cars, "Tourist" or second class | 30 | 30 | 7.30 | 7.01 |
| Dining Cars | 7 | 13 | 1.70 | 3.04 |
| Passenger Cars destroyed or broken up but not yet replaced (c) | 5 | ..... | 1.22 | ..... |
| Total Passenger Cars | 411 | 428 | 100.00 | 100.00 |
| FREIGHT AND OTHER CARS. (b) | | | | |
| IN SERVICE IN GOOD ORDER | 10,141 | 10,573 | 91.98 | 96.14 |
| OUT OF SERVICE— | | | | |
| Undergoing light repairs | 212 | 112 | 1.93 | 1.02 |
| Undergoing heavy repairs | 30 | 53 | .27 | .48 |
| Awaiting repairs | 172 | 259 | 1.56 | 2.36 |
| Total undergoing or awaiting repairs | 414 | 424 | 3.76 | 3.86 |
| Total available | 10,555 | 10,997 | 95.74 | 100.00 |
| Freight Cars destroyed or broken up but not replaced (c) | 470 | ..... | 4.26 | ..... |
| Too light for present traffic conditions. | | | | |
| Total Unserviceable | 470 | ..... | 4.26 | |
| Total Freight and Other Cars | 11,025 | 10,997 | 100.00 | 100.00 |
| Grand Total, Car Equipment | 11,436 | 11,425 | | |

(a) Under the heading "Passenger Cars" are included all the cars hauled in passenger trains, including Baggage, Mail and Express Cars.

(b) Under the heading "Freight and other Cars" are included Caboose, Roadway and Work Cars.

(c) Subsequently to date of Receivership, October 13, 1893.

(d) Includes 5 composite cars.

NOTE.—Of the freight cars reported as in good order on December 31, 1896, 2800 box, 300 flat, and 582 coal cars are old cars, too light for present traffic conditions. When these cars become unserviceable they will not justify the expense of general repairs, but should be replaced by cars of greater capacity and modern construction.

152. That the facts concerning the residence and citizenship of the several parties hereto, and the corporate character of such of said parties as are corporations, are as alleged in the pleadings herein in respect thereto.

153. That this suit is an action arising under the Constitution and laws of the United States, and that the amount involved exceeds the sum of $5,000, exclusive of costs.

CONCLUSIONS.

As my conclusions herein, I respectfully report

FIRST. That the Equipment Trust Indenture, hereinabove described, made, executed and delivered by the Union Pacific Railway Company to the American Loan and Trust Company, as Trustee, dated October 1, 1887, constitutes, in legal effect, a mortgage and lien, according to its terms, upon the engines and cars constituting the equipment described in my findings herein as subject to the Series A bonds issued under said trust indenture to the extent and amount which is now, or which may be hereafter owing upon said series A bonds as herein found;

And upon the engines and cars constituting the equipment described in my findings herein as subject to the Series B bonds issued under said trust indenture to the extent and amount which is now, or which may be hereafter due and owing upon said series B bonds as herein found;

And upon the engines and cars constituting the equipment described in my findings herein as subject to the Series C bonds issued under said trust indenture to the extent and amount which is now or may be hereafter owing upon said Series C bonds as herein found.

Superior and paramount to any and every estate, right, title, interest or claim in or to the same or any part thereof, of any and every person, party or corporation whatsoever, including the United States of America.

SECOND. That the said mortgage or deed of trust, known as the Omaha Bridge Mortgage, made, executed and delivered by the Union Pacific Railroad Company to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as Trustees, dated April 1, 1871, as supplemented by the Indenture of said railroad company, dated September 27, 1871, of which mortgage J. Pierpont Morgan and Edwin F. Atkins, defendants herein, are the present trustees, is a first

mortgage and lien to the amount thereof as herein found, according to its terms, upon all the property described in my findings herein as the property of the Omaha Bridge Division of the Union Pacific Railway Company, superior and paramount to every estate, right, title, interest or claim in or to the same or any part thereof, of any and every person, party or corporation, whatsoever, including the United States of America, excepting only the lien of the American Loan and Trust Company, trustee under its equipment trust indenture of October 1, 1887, to the extent and so far as the same effects the equipment belonging to the said Omaha Bridge Division of said railway company's property.

THIRD. That the said mortgage or deed of trust known as the Omaha Bridge Renewal Mortgage, made, executed and delivered by the Union Pacific Railway Company to the Central Trust Company of New York as trustee, dated October 1, 1885, of which mortgage said Central Trust Company of New York, defendant herein, is the present trustee, is a mortgage and lien, according to the terms thereof, to the extent and amount which is now or may hereafter be owing upon the bonds secured thereby as hereinabove found, being the principal amount of $734,000, and interest thereon at five per cent. per annum from October 1, 1894, upon all the property described in my findings herein as the property of the Omaha Bridge Division of the Union Pacific Railway Company, except, however, the moneys, credits and property which the Receivers herein have derived or may hereafter derive from the use and operation of said property by them as such Receivers, superior and paramount to any and every estate, right, title, interest or claim in or to the same, or any part thereof, of any and every person, party or corporation whatsoever, including the United States of America, excepting only the lien of the American Loan and Trust Company, trustee under its equipment Trust Indenture of October 1, 1887, to the extent and so far as the same affects the equipment of the Omaha Bridge Division property, and the lien of the said Omaha Bridge mortgage of which J. Pierpont Morgan and Edwin F. Atkins are trustees, dated April 1, 1871, to the extent and so far as the same affects the Omaha Bridge Division of said railway company's property.

FOURTH. That the mortgage or deed of trust made, executed and delivered by said the Union Pacific Railroad Company to Edwin D. Morgan and Oakes Ames, as trustees, dated November 1, 1865, as supplemented by the indenture of March 12, 1868, of which mortgage F. Gordon Dexter and Oliver Ames are the present trustees, is a first mortgage and lien, according to the terms thereof, to the extent which is now or may hereafter be owing upon the bonds secured thereby, as herein above found, upon all the property hereinabove described as constituting the property of the Union Division of the Union Pacific Railway Company and the Omaha Bridge Division of the Union Pacific Railway Company, superior and paramount to any and every estate, right, title, interest or claim in or to the same, or any part thereof, of any person, party or corporation whatsoever, including the United States of America, excepting only,

The lien of the American Loan and Trust Company, Trustee under the Equipment Trust Indenture of the Union Pacific Railway Company, dated October 1, 1887, to the extent and so far as the same affects the equipment of the said Union Division and the said Omaha Bridge Division of said railway and

The lien of said Omaha Bridge Mortgage of the Union Pacific Railroad Company dated April 1, 1871, to the extent and so far as the same affects the property of the Omaha Bridge Division of said railway and

The lien of the said Omaha Bridge Renewal Mortgage of the Union Pacific Railway Company, dated October 1, 1885, to the extent and so far as the same affects the property of the Omaha Bridge Division of the said railway company, and also the right of the United States to have the preference at all times in the use, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the telegraph line and railroad embraced in said mortgage for the transmission of dispatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the government whenever required by any department thereof.

FIFTH. That the *ipso facto* mortgage or lien of the United States of America, complained upon herein, is a mortgage and lien to the extent and amount which has heretofore

or may hereafter be paid by the United States of America for principal and interest upon the said subsidy bonds issued by it as herein found, to said Union Pacific Railroad Company, and which has not been repaid, as hereinabove found and stated, upon all the property herein described as constituting the property of the Union Division of the Union Pacific Railway Company and the Omaha Bridge Division of the Union Pacific Railway Company, except, however, the moneys, credits and property which the Receivers herein have derived or may hereafter derive from the use and operation of said property by them as such Receivers, subject to the said liens of the mortgages hereinabove described, being the Equipment Trust Indenture held by the American Loan and Trust Company, Trustee, dated October 1, 1887; the Omaha Bridge Mortgage dated April 1, 1871, held by J. Pierpont Morgan and Edwin F. Atkins, Trustees, the Omaha Bridge Renewal Mortgage, dated October 1, 1885, held by the Central Trust Company, of New York, Trustee, and the first mortgage of the Union Pacific Railroad Company, dated November 1, 1865, held by F. Gordon Dexter and Oliver Ames, Trustees, to the extent and amount of such liens as hereinabove found, and superior and paramount to any and every other estate, right, title, interest or claim in or to said property or any part thereof, of any and every other person, party or corporation whatsoever.

That said United States Union Pacific Sinking fund, established under said act of Congress of May 7, 1878, as the same exists, is applicable to the payment and satisfaction of the subsidy bonds so issued and delivered by the United States to the Union Pacific Railroad Company, and of all interest paid by the United States thereon and not reimbursed, as and upon the conditions provided in said Act of Congress of May 7, 1878.

SIXTH. That the said mortgage or deed of trust, known as the Sinking Fund Mortgage, made, executed and delivered by the Union Pacific Railroad Company to the Union Trust Company, of New York, Trustee, dated December 18, 1873, as supplemented by the extension agreement dated August 9, 1893, is a mortgage and lien, according to the terms thereof, to the amount and extent which is now or may hereafter be owing upon the bonds secured thereby, as herein found, upon all the property described in my findings herein as the property of the Union Division of the

Union Pacific Railway Company and of the Omaha Bridge Division of the Union Pacific Railway Company, except, however, the moneys, credits and property which the Receivers herein have derived or may hereafter derive from the use and operation of said property by them as such Receivers, subject to the liens of the following named mortgages, hereinabove described:

The Equipment Trust Indenture of the Union Pacific Railway Company, dated October 1, 1887, held by the American Loan and Trust Company, Trustee.

The Omaha Bridge Mortgage of the Union Pacific Railroad Company, dated April 1, 1871, held by J. Pierpont Morgan and Edwin F. Atkins, Trustees; the Omaha Bridge Renewal Mortgage of the Union Pacific Railroad Company, dated October 1, 1885, held by the Central Trust Company, of New York, Trustee; the First Mortgage of the Union Pacific Railroad Company, dated November 1, 1865, held by F. Gordon Dexter and Oliver Ames, Trustees, and the lien of the United States of America, as hereinabove found, and also the preference right of the United States in the use as aforesaid of said railroad and telegraph at reasonable rates of compensation, but superior and paramount to any and every other estate, right, title, interest or claim in or to said property, or any part thereof, of any and every other person, party or corporation whatsoever.

That said Sinking Fund Mortgage is also a first and only mortgage and lien upon all and singular the lands granted to said Union Pacific Railroad Company under Acts of Congress, and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in or to the same, or any part or parcel thereof, which said Union Pacific Railway Company, defendant herein, now has, holds, owns or has title to, or which it may hereafter acquire, have, hold, own or be or become entitled to, by force or by virtue of said Acts of Congress, saving and excluding all parts and parcels of said lands which shall have been, previous to the execution of said mortgage, conveyed or contracted to be conveyed by the said Union Pacific Railroad Company or said Union Pacific Railway Company to purchasers thereof, and saving and excepting all parts or parcels of said lands which have been conveyed by the trustees of said mortgage, or re-

leased from the operations thereof under the terms of said mortgage.

SEVENTH. That said The Union Pacific Railway Company has defaulted in the payment of the principal obligations of its bonds and mortgage herein described as the first mortgage of the Union Pacific Railroad Company, dated November 1st, 1865, in the principal amount of $6,475,000, due January 1st, 1896, and $1,598,000, due January 1st, 1897, and that it has defaulted in the payment of its obligations upon the mortgage lien of the United States, herein described, and that said railway company is wholly insolvent, and unable to pay said indebtedness.

That the railroad, telegraph, rolling stock, equipment and other property and franchises, rights, functions, immunities and appurtenances of the said defendant the Union Pacific Railway Company, subject to the lien of the United States as herein found, are so situated and are of such a nature that the same cannot be sold in parcels without great injury to all the parties in interest, and that it is expedient that the same be sold as an entirety.

EIGHTH. That the United States of America, complainant herein, is entitled to a judgment and decree of this Court, foreclosing its said mortgage lien, and fixing and determining the several liens upon said property as herein found and adjudging and decreeing that the bonds, security and property contained in the sinking fund herein described as existing under the provisions and conditions of the Act of Congress of May 7th, 1878, as the same now exists or may exist, be sold and converted into money, and that the proceeds thereof, together with the money and credits which now or may hereafter constitute a part of said sinking fund, be applied in payment of the said lien of the United States.

And further, that the property of the said defendant The Union Pacific Railway Company, described herein as subject to the lien of the United States, herein be sold subject to the liens thereon of the said Equipment Trust Indenture, held by the American Loan and Trust Company, Trustee, dated October 1st, 1887; the Omaha Bridge Mortgage, held by J. Pierpont Morgan and Edward H. Atkins, Trustees, dated April 1st, 1871; the Omaha Bridge Renewal Mortgage, held by the Central Trust Company

of New York, Trustee, dated October 1st, 1885, and the first mortgage of the Union Pacific Railroad Company, held by F. Gordon Dexter and Oliver Ames, as Trustees, dated November 1st, 1865, free and clear of all right, title, interest, liens and claims of the said The Union Pacific Railway Company, and each of the other defendants in this suit, and that the proceeds of such sale be applied in payment of complainants' said mortgage lien, all agreeably to the rules and practice of this Court.

Respectfully submitted,

WM. D. CORNISH,
Special Master.

Dated July 20, 1897.
Filed July 29, 1897.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EIGHTH CIRCUIT AND DISTRICT OF NEBRASKA.

The United States of America,
*Complainants,*

vs.

The Union Pacific Railway Company, F. Gordon Dexter and Oliver Ames, as Trustees, Union Trust Company of New York, as Trustee, J. Pierpont Morgan and Edwin F. Atkins, as Trustees, Central Trust Company of New York, as Trustee, the American Loan & Trust Company, as Trustee, and E. Ellery Anderson, S. H. H. Clark, Oliver W. Mink, Frederic R. Coudert and John W. Doane, as Receivers,
*Defendants.*

} In Equity

EXCEPTIONS TAKEN BY THE COMPLAINANTS TO THE MASTER'S REPORT FILED IN THIS CAUSE BY WILLIAM D. CORNISH, MASTER IN CHANCERY OF THIS COURT.

Now, come the United States of America, complainants in this cause, and except to the report herein filed by William D. Cornish, Master in Chancery in this cause, to whom the same has been heretofore referred by ord the Court.

FIRST EXCEPTION.

For although requested by these complainants so find, the said Master has failed and omitted to find that t eastern terminus of the Union Pacific Railway is at the e line of said railway company's property between Twel and Thirteenth streets, in the City of Council Bluffs, in t State of Iowa, the same being a point upon the west boundary of the State of Iowa, east of and opposite to t east line of section 10, in township 15, north of range east of the sixth principal meridian in the territory Nebraska.

SECOND EXCEPTION.

For that the said Master has found against the prot and argument of these complainants, that the "Union Pacific Railroad Company did not, at any ti construct its railroad from the point where the same was as aforesaid, commenced in said section 10, township range 13, to the point designated by the President of t United States on March 7th, 1864, as a point on the west boundary of the State of Iowa east of and opposite to east line of section 10, township 15, range 13, east of sixth principal meridian in the territory of Nebraska." whereas, in point of fact, the said railroad company construct its railroad from a point in said section 10 in territory of Nebraska, as found by said Master, in a sou erly direction to a point now known as Bridge Junction the State of Nebraska, and thence east across its bri over the Missouri River, to its station and eastern termin which station is between Twelfth and Thirteenth stree within the corporate limits of the City of Council Blu in the State of Iowa, as is also every part of the State Iowa opposite to said section 10, township 15, range east of the sixth principal meridian in the territory (n state) of Nebraska, and no other railroad having be built within the City of Council Bluffs, and no other s tion or eastern terminus having been occupied within s city or at any point opposite said section 10, by said co pany, the said point or station in Council Bluffs of s Union Pacific Railroad was finally adopted immediat after the construction of said bridge in the year 1872, the eastern terminus of said railroad, and the line from said bridge junction to the point in section 10 in Nebras

described by the said Master as the point where original construction began, became, by the construction of said railroad and bridge to the eastern terminus of said road, a spur or branch, and is not and never was part of the main line thereof.

THIRD EXCEPTION.

Becuase the Master has reported (paragraph 29 of his report) against the protest and argument of these complainants, that the construction of the bridge and and tracks—"extending from the east line of the railroad company's property between Twelfth and Thirteenth avenues in Council Bluffs, Iowa, in a westerly direction, to the east branch of the Missouri river, to a connection with the bridge across said river, to the westerly branch thereof, and across the railroad tracks connecting therefrom westerly through Omaha to a connection with the tracks of said railroad company originally constructed by it to a point at about Twentieth street, in the City of Omaha at a distance of three and 98-100 miles."

"Was not certified to the United States under the provisions of the said Acts of July 1, 1862, and July 2, 1864, and that no subsidy bonds or patents of land were delivered by the United States to said railroad company at the time of or after the construction thereof, or based specifically thereon."

The said statement being entirely irrelevant to and having no necessary connection with any issue in this cause:

The said omission to certify the same and to issue subsidy bonds, if true, having been caused by the mere neglect and omission of the said railroad company, or of commissioners appointed by the Secretary of the Interior, and not by the United States, or any officer entitled to bind it to adopt any other eastern terminus than that fixed by the President of the United States as aforesaid and as reported by said Master, and any change of said eastern terminus having been forbidden by law.

FOURTH EXCEPTION.

That the Master has found in paragraph 30 of his report, against the protest and argument of these complainants, that after the construction of the bridge across the Missouri River between Omaha and Council Bluffs, in the years 1871 and 1872,

"said bridge and its approaches were used and operated by said railroad company as a part of the main line of said railroad property, and are included in what has since been described as the Bridge Division of said property."

Whereas said statement, if true, is irrelevant and immaterial to this controversy in any of its parts.

FIFTH EXCEPTION.

That the said Master has erred in the 34th paragraph of his said report, against the protest and argument of these complainants, in dividing and separating the line of the Union Pacific Railway into two portions, viz.: the railway line from Council Bluffs, Iowa, to Bridge Junction in the city of Omaha, including the bridge across the Missouri River, known and designated by him as the Omaha Bridge Division, and the line of railway from Omaha, Nebraska, to a point five miles west of Ogden in Utah, known and designated as the Union Division, whereas in point of fact there is no such division or separation known to the laws of the land;—the said railway being a single continuous line of railroad beginning at its station in the City of Council Bluffs, Iowa, being the initial or eastern terminal point of said railway as fixed by the President of the United States in 1864, thence across the bridge over the Missouri River to the city of Omaha, and through said city and through the States of Nebraska, Wyoming, Colorado and Utah, to a point five miles beyond Ogden, in the State of Utah.

SIXTH EXCEPTION.

That the Master in the 46th paragraph of his report, while correctly copying the description of the mortgaged property contained in the mortgage of the Union Pacific Railway Company to Edwin D. Morgan and Oakes Ames, as trustees, has, against the protest and argument of these complainants, failed to state that the reference in said description to the city of Omaha in the territory of Nebraska, as being—

"a point on the western boundary of the State of Iowa heretofore fixed by the President of the United States."

creates a contradiction in terms in said description, and the fact that the reference to the city of Omaha must be re-

jected as *falsa demonstratio*, and that notwithstanding such reference, the line of mortgaged railroad property is identical with and the same as that hereinbefore last described beginning at the said station of the Union Pacific Railway Company in the city of Council Bluffs, on the western boundary of the State of Iowa, and thence extending as hereinbefore described to a point five miles beyond Ogden in the State of Utah.

SEVENTH EXCEPTION.

That the Master has, against the protest and argument of these complainants, failed and omitted to report that the facts stated in the 49th paragraph of his report that the first mortgage of the Union Pacific Railroad Company of November 1, 1865, was not recorded within the county of Pottawattamie in the State of Iowa is entirely immaterial to and of no importance in this cause, all other mortgage liens having been taken with full notice thereof.

EIGHTH EXCEPTION.

That the said Master has, against the protest and argument of these complainants, failed and neglected to find that the said bridge mortgage made April 1, 1871, designated in the 89th paragraph of said report, and the said supplemental mortgage described in the 91st paragraph of said report, made September 27th, 1871, to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as trustee, and the bonds secured thereby now outstanding described in the 93d paragraph of said report were and are junior and subordinate to the subsidy lien or *ipso facto* mortgage of the United States of America, asserted in the bill of complaint filed in this case.

NINTH EXCEPTION.

That the Master has, against the protest and argument of these complainants, found that the execution and delivery of a mortgage dated October 1, 1885, to the Central Trust Company of New York, as trustee, called in said report the "Omaha Bridge Renewal Mortgage," and the other mortgage between the same parties described in the 94th and 95th paragraphs of said report, and copied into the 95th paragraph aforesaid, constituted liens upon said bridge and approaches, whereas, the said mortgages and each of them

were and are wholly illegal and unauthorized by law, and did and do not constitute liens on said bridge or approaches or on any part of the railway of the Union Pacific Railway Company and, therefore, said finding is immaterial and irrelevant to the controversy involved in this suit.

### Tenth Exception.

That the Master has found, against the protest and argument of these complainants in the 99th, 100th, 101st and 102d paragraphs of said report, and in each of them, that bonds were issued under said last described mortgage, whereas said mortgage and said bonds, being wholly unauthorized by law, said portion of said report is immaterial and has no bearing upon this cause.

### Eleventh Exception.

That the Master, against the protest and argument of these complainants, has found in the 103d paragraph of his report that none of said bonds purporting to have been issued under the said Omaha Bridge renewal mortgage have been paid or cancelled, and in the 107th paragraph of said report that said bonds issued under said Omaha Bridge renewal mortgage of 1885 are now outstanding, and have no lien or other security for payment, except the lien of said mortgage upon the property therein described, whereas in point of fact such bonds were illegally issued and are unsecured by law, and have no legal or authorized existence except it may be as floating indebtedness of said Union Pacific Railway Company.

### Twelfth Exception.

That the Master, against the protest and argument of the complainants, has found, in the 106th paragraph of his report, that the amount of principal and interest owing upon the bonds which purport to have been issued under the said Omaha Bridge Renewal mortgage amounted on the first day of April, 1897, to the principal sum of $734,000, with interest thereon to the amount of $91,750, making a total of $825,750; whereas in point of fact the sum of $145,000, part of said bonds, described in the 101st paragraph of said report were not issued by way of renewal or refunding

of any bonds previously existing secured by the Omaha Bridge mortgage of April 1, 1871, but the said previously existing bonds had been redeemed and paid by said Railway Company and ought by right to have been canceled, but said $145,000 of bonds were issued by said company under pledge to Drexel, Morgan & Co., September 4th, 1891, as described in the said paragraph, after such redemption and payment; and whereas none of the 589 of said bonds were exchanged for bonds secured by the mortgage of April 1, 1871, and were not used in renewal or refunding thereof, but on the contrary, were sold and the proceeds only used to reimburse the treasury of the said Union Pacific Railway Company for moneys previously paid out of said treasury of said company in discharge and satisfaction of an equal amount of mortgage bonds secured by the mortgage of April 1st, 1871.

THIRTEENTH EXCEPTION.

That the Master, against the protest and argument of these complainants, has erred in the 115th and succeeding paragraphs of his report, in describing and characterizing the railroad and railroad property and bridge described therein, extending from the eastern terminus of the said Union Pacific Railway on the east line of said railway company's property between Twelfth and Thirteenth Avenues in Council Bluffs, Iowa, in a westerly direction to a junction with the Union Division of the Union Pacific Railway at Twentieth street in Omaha, Nebraska, as if the same were and constituted a separate division with appurtenances, switches, turnouts, sidings and turn tracks right of way and branch lines with lots, yards, terminals, station and other grounds in Council Bluffs at Omaha; also the tools, appliances, furniture, fixtures, supplies, materials rolling stock located on what the said Master calls said Omaha Bridge Division, or acquired or provided for use in connection therewith, together with all structures upon said premises, including the Broadway depot, the transfer depot, freight house, round house, machine shops, coal chutes and other structures, and facilities constructed or required for or used for the purpose of or in connection with the said railway property and the rights of way thereof, and its switches, turnouts and side tracks, together with easements over streets and alleys crossed thereby in said

Council Bluffs in Omaha; also the lines of telegraph, the telegraph material, fixtures and appliances belonging to said railway company, located upon or appertaining to the said Omaha Bridge Division; also all furniture, fixtures, appliances, appurtenances, supplies and material in the various offices of said railway company upon or remote from said line of railway, including the principal offices of said company at Omaha, Nebraska, and Boston, Massachusetts, owned, acquired or provided for use in connection with said Omaha Bridge Division of said railway property; also the rights and property of the character, as above described, owned or provided for common use of the said several divisions of said railway company's property to the extent of the proportionate use thereof to the business and concerns of the said Omaha Bridge Division of said railway company's property; also the rights and interests of said railway company in and to the property of every kind and nature described in said report, or otherwise owned, acquired or provided for the use of said Omaha Bridge Division; also the corporate rights and franchises of said railway company, so far as they pertain to the said Omaha Bridge Division; also the moneys, credits and property, not in said Master's report otherwise specified, in possession of the said Receivers, or to which they are or may be entitled which has been or may be derived from said Receivers from or on account of the property of the Union Pacific Railway Company pertinent to the said Omaha Bridge Division or from the sale or other disposition of any of said property or from the use of the same or from the operation of the same of the said Receivers subject to the charges of said Receivers; and that in the 128th paragraph of said report, said Master submits a schedule, marked Schedule 1, as containing a more particular description of a portion of the property above described as included in the Omaha Bridge Division of the said railway, and in paragraph 129 of said report submits a schedule marked Schedule 2, as containing a more particular description of a portion of the property above described, the record title of which stands in the names of the trustees of the Union Pacific Railway as therein shown, which property is included in the property of the Omaha Bridge Division of said railway, and in paragraph 130 and succeeding paragraphs; the said Master at length describes other property as embraced in and per

taining to said Union Division of said Union Pacific Railway, whereas in law there are no such divisions as the Omaha Bridge Division and the Union Division of said railway, except as the said titles or names may be or have been used for reasons of convenience;—the said Union Pacific Railway Company being and having at all times been a continuing, connecting and unbroken line of railway extending from its eastern terminus aforesaid as fixed by Abraham Lincoln, President of the United States, in 1864, in the City of Council Bluffs in the State of Iowa, to and across the bridge over the Missouri river and thence through the City of Omaha and through the states of Nebraska, Wyoming, Colorado and Utah to the western terminus of said Union Pacific Railway at a point five miles beyond Ogden in the territory, now state, of Utah.

AND TO THE CONCLUSIONS ADOPTED BY THE MASTER THE SAID COMPLAINANTS RESPECTFULLY EXCEPT, AS FOLLOWS:

That the Master has adopted and reported conclusions numbered from First to Seventh, to which and each of which these complainants except, the same having been adopted by the said Master contrary to their protest and argument, and for cause of such exceptions states:

(A.) That the equipment trust indenture is not a mortgage and lien, or, if such, is junior to the subsidy lien of the United States of America.

That if the true construction of said equipment trust indenture be that it reserves title and possession to the American Loan & Trust Company, then and in that case this complainant admits its priority to the lien of the subsidy bonds issued by the United States of America, and to secure which an *ipso facto* mortgage or lien is reserved in the Acts of 1862 and 1864 aforesaid, but if the same constitutes a mortgage of the Union Pacific Railway Company and lien to said American Loan and Trust Company, as complainants aver, and said Master finds, then and in that case said mortgage and lien are junior and subordinate to the *ipso facto* mortgage or lien aforesaid of the United States of America.

(B.) That as hereinbefore stated the said mortgage or deed of trust known as the Omaha Bridge mortgage described in the second conclusion of said Master, is not a first or prior mortgage and lien as is found by said Master, but is a lien and mortgage junior to the right and claim of the United States of America.

(C.) That the Omaha Bridge renewal mortgage (so-called) delivered to the Central Trust Company of New York dated October 1, 1885, is not a mortgage and lien as found by said Master superior to the *ipso facto* mortgage or lien securing the subsidy bonds of the United States, but, if possessing any legal value whatever, the same is subordinate and junior to the said mortgage or lien of the United States, and all the bonds secured thereby have been paid and ought to be cancelled.

(D.) That while the mortgage or deed of trust to the said Edwin D. Morgan and Oakes Ames, is, to a limited extent, a first mortgage upon the said Union Pacific Railway and to such limited extent is superior and prior in legal effect to the *ipso facto* mortgage or lien of the United States of America, such mortgage or deed of trust is not only as described in said Master's Report (Fourth Conclusion) subordinate to—

"the right of the United States to have the preference at all times in the use, at fair and reasonable rates of compensation not to exceed the amounts paid by private parties for the same kind of service of a telegraph line and railroad embraced in said mortgage for the transmission of dispatches over said telegraph lines, and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the government whenever required by any department thereof,"

but is subject to all the provisions of the Sixth Section of the Act of July 1, 1862,

"relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies and public stores," for the Government of the United States; and especially subject to the further express provision of said Sixth Section, that—

"all compensation for services rendered by the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid;"

meaning thereby that until said subsidy bonds shall be fully paid, said first mortgage and the property thereby encumbered and the holders of the bonds thereby secured are subjected by law to the payment of the subsidy bonds and interest of the United States, notwithstanding any decree which may be rendered in this action, or any sale which may be made under the authority of this case, in the hands of any purchaser of the property who may purchase the same in this case, and whose purchase may be confirmed by this Court, until all said subsidy lien bonds and interest have been fully paid.

(E.) That the Master, although urged thereto by the complainants, has failed and neglected to report that the said railway is subject, and should be sold subject to, the provisions of the *first* sentence of the *fifteenth* section of the Act of July 1st, 1862, aforesaid, which is in the following words, to-wit:

"That any other railroad company now incorporated or hereafter to be incorporated shall have the right to connect their road with the road and branches provided for by this act at such places and upon such just and equitable terms as the President of the United States may prescribe."

The aforesaid provision, being one of permanent application, and, when necessary, should be enforced, in order perpetually to accomplish the object of the said act as described in the *eighteenth* section thereof in the following words, namely:

"To promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal and military purposes."

Each and all of which exceptions these complainants pray may be granted and allowed by suitable provisions inserted in any decree to be entered in the premises.

Dated July , 1897.

Special Assistant to the Attorney-General
in the matter of the Union Pacific Railway.

Special Counsel for the United States.

## Decree of Foreclosure.

AT A SESSION OF THE CIRCUIT COURT OF THE UNITED STATES HELD IN AND FOR THE DISTRICT OF NEBRASKA, ON THE 29TH DAY OF JULY, 1897.

PRESENT: HON. WALTER H. SANBORN, Circuit Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY, S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, JOHN W. DOANE AND FREDERIC R. COUDERT, RECEIVERS; F. GORDON DEXTER AND OLIVER AMES, AS TRUSTEES, UNION TRUST COMPANY OF NEW YORK, AS TRUSTEE, J. PIERPONT MORGAN AND EDWIN F. ATKINS, AS TRUSTEES AND THE CENTRAL TRUST COMPANY, OF NEW YORK, AS TRUSTEE,
Defendants.
} Union Division

### FINAL DECREE.

This cause came on to be heard upon the bill of complaint of the United States of America, complainants, and upon the several answers of the Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers; F. Gordon Dexter and Oliver Ames as Trustees; Union Trust Company of New York, as Trustee; J. Pierpont Morgan and Edwin F. Atkins, as Trustees; and The Central Trust Company of New York as Trustee; and upon the replications to said answers, respectively; and upon the proofs and exhibits in said cause and the report thereof of William D. Cornish, Special Master, to whom said cause was referred by order dated March 25, 1897, and which report was filed in said cause on the 29th day of July, 1897, and upon the exceptions to said report filed by the complainants and by the defendants Dexter and Ames, as Trustees, and upon

all the papers and proceedings in said cause; and the complainants in said cause appeared by the Attorney General and by Mr. George Hoadley, Special Assistant to the Attorney General, and Mr. John C. Cowin, Special Counsel for the United States, and the defendants therein, hereinbefore named, apppeared by their respective solicitors and counsel, to-wit: The Union Pacific Railway Company by Mr. William R. Kelly; Union Trust Company of New York, as Trustee, by Mr. Wheeler H. Peckham, J. Pierpont Morgan and Edwin F. Atkins, as Trustees, by Mr. Victor Morawetz, the Central Trust Company of New York as Trustee, by Mr. Henry W. Calhoun; F. Gordon Dexter and Oliver Ames, as Trustees, by Mr. Winslow S. Pierce, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers by Mr. Wm. R. Kelly; and said cause having been argued by counsel, and the Court being fully advised in the premises, it is

ORDERED, ADJUDGED AND DECREED,

1. That each and every exception taken to the report of William D. Cornish, Special Master, to whom this case was referred by order herein dated March 25th, 1897, (which said report was filed in this cause upon the 29th day of July, 1897) be and the same is hereby over-ruled and disallowed and said report is in all respects approved and confirmed, except as herein othewise expressly determined. To which action of the Court in overruling the said exceptions to said report taken by the complainants and each of them the complainants now except.

2. And it is further considered by the Court upon the pleadings and proofs, that the equity of the cause is with the complainants, and that they are entitled to the relief sought by their bill, so far as not otherwise held by said Master in his report so as aforesaid confirmed and approved. That the said United States of America duly instituted this suit and became parties complainant to this cause by action of the Attorney General of the United States duly had and taken on their behalf, pursuant to the authority provided by law, and as directed by the President of the United States.

3. That the Union Pacific Railroad Company was duly incorporated and organized under and by virtue of an Act of Congress of the United States, entitled "An Act to aid in the construction of a railroad and Telegraph Line

from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same, for postal, military and other purposes," approved July 1st, 1862; also an Act of Congress amendatory thereof, approved July 2d, 1864, and other Acts of the Congress of the United States amendatory thereof and supplemental thereto.

And said The Union Pacific Railroad Company was, by the legislation aforesaid, authorized to lay out, locate construct, furnish, maintain and enjoy the continuous railroad and telegraph described and embraced in the First Mortgage of said Railroad Company hereafter described, and which said railroad extends from Council Bluffs, on the Iowa bank of the Missouri River, across said River, and through the States of Nebraska, Wyoming and Colorado, into the State of Utah, to a connection with the railroad of the Central Pacific Railroad Company, at a point about five miles west of the City of Ogden, in the State of Utah, a distance of 1,042.41 miles, more or less, of main line, including the bridge over the Missouri River between Council Bluffs in the State of Iowa, and Omaha, in the State of Nebraska; all of which line of railroad and telegraph and bridge, with the branches and appurtenances thereof, were located, constructed, equipped and furnished by The Union Pacific Railroad Company, as in the manner and upon the conditions, within the times and upon the approvals and consents contemplated, defined and described in said legislation.

That the said The Union Pacific Railway Company was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several Acts of the Congress of the United States, by the consolidation of The Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, and said The Union Pacific Railway Company, so created, thereupon became the successor to each and all of the said constituent companies, and thereby became vested with all the rights, titles, interest, lands and land grants, properties and franchises of each and all of the said constituent Companies; and said The Union Pacific Railway Company is the owner of the said railroad, property and franchises, embraced in the *ipso facto* mortgage securing Subsidy lien bonds to the complainants, and in the first mortgage of the Union Pacific Railroad Company dated November 1st, 1865, under which the defendants F.

Gordon Dexter and Oliver Ames, are Trustees, and which is hereinafter more fully referred to; and said The Union Pacific Railway Company, in addition thereto, is the owner of the further lines of railway and property described in the original bill of complaint herein extending from Kansas City, in the State of Missouri, westwardly through the State of Kansas, and into the State of Colorado, to Denver and from Denver in the State of Colorado, in a northerly direction, to Cheyenne, in the State of Wyoming.

4. That, beginning on February 1st, 1866, under and in pursuance of the legislation aforesaid, there were issued and delivered by the Secretary of the Treasury of the United States to the said The Union Pacific Railroad Company bonds of the United States (hereinafter termed Subsidy Bonds), of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest, payable semi-annually in lawful money and legal tender of the United States, to the amount of $27,236,512, all of which bonds were of the tenor and effect described in said acts of the Congress of the United States, approved July 1st, 1862, and July 2d, 1864, and were issued and delivered by the said Secretary of the Treasury to the said Railroad Company as, in the manner, and upon the conditions prescribed in said Acts, and the issue of said bonds and the delivery thereof to the said Company did, by force of law, *ipso facto*, constitute a mortgage on the whole line of railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, including all the rights, franchises and appurtenances thereunto belonging, and in consideration of which said bonds were issued, which said lien of the United States was by the provisions of said Act of Congress of July 2d, 1864, made subordinate to the lien of said first mortgage bonds authorized to be issued upon the railroad and telegraph lines of said The Union Pacific Railroad Company to an amount not exceeding the amount of said Subsidy Bonds of the United States on its road, property and equipments, except as to such provisions of the sixth section of said Act of July 1st, 1862, which reserved to the United States a preference in the use of the said railroad and telegraph line for the transmission of despatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States at fair and reason-

able rates of compensation, not to exceed the amounts
by private parties for the same kind of service.

That the Subsidy bonds of the United States so is
and delivered by the Secretary of the Treasury of the Un
States to the Union Pacific Railroad Company, in pursu
of the Acts of the Congress of the United States afore
bore, respectively, the dates of issue, were issued in the res
tive amounts, matured and will mature at the respectived
and bore interest from the respective dates, as appea
the following tabulated statement thereof, to-wit:

| Maturity of Bonds | Date of Issue | To whom delivered | Commencement of Interest | Amount | To |
|---|---|---|---|---|---|
| February 1, 1896 ..... | Feb. 1, 1866 ..... | | Feb. 1, 1866 | 640,000 | |
| | May 7, 1866 ..... | | May 7, 1866 | 400,000 | |
| | June 26, 1866 ..... | | June 26, 1866 | 640,000 | |
| | July 13, 1866 ..... | | July 13, 1866 | 320,000 | |
| | Aug. 9, 1866 ..... | | Aug. 9, 1866 | 560,000 | |
| | Sep. 11, 1866 ..... | | Sep. 11, 1866 | 720,000 | |
| | Oct. 15, 1866 ..... | | Oct. 13, 1866 | 560,000 | |
| | Nov. 8, 1866 ..... | | Nov. 7, 1866 | 480,000 | |
| January 1, 1897 ..... | Jan. 9, 1867 ..... | | Jan. 8, 1867 | 560,000 | |
| | June 11, 1867 ..... | | June 10, 1867 | 640,000 | |
| | July 6, 1867 ..... | | July 6, 1867 | 640,000 | |
| | Aug. 29, 1867 ..... | | Aug. 29, 1867 | 560,000 | |
| | Oct. 2, 1867 ..... | | Oct. 2, 1867 | 560,000 | |
| | Nov. 5, 1867 ..... | | Nov. 5, 1867 | 560,000 | |
| | Dec. 13, 1867 ..... | | Dec. 13, 1867 | 320,000 | |
| January 1, 1898 ..... | Jan. 28, 1868 ..... | | Jan. 27, 1868 | 957,000 | |
| | May 18, 1868 ..... | | May 16, 1868 | 960,000 | |
| | May 19, 1868 ..... | | May 18, 1868 | 960,000 | |
| | June 12, 1868 ..... | | June 12, 1868 | 960,000 | |
| | June 17, 1868 ..... | | June 18, 1868 | 960,000 | |
| | July 23, 1868 ..... | | July 22, 1868 | 960,000 | |
| | July 25, 1868 ..... | | July 24, 1868 | 1,841,000 | |
| | Aug. 12, 1868 ..... | | Aug. 11, 1868 | 640,000 | |
| | Aug. 29, 1868 ..... | | Aug. 28, 1868 | 640,000 | |
| | Sep. 7, 1868 ..... | | Sep. 7, 1868 | 1,280,000 | |
| | Sep. 23, 1868 ..... | | Sep. 23, 1868 | 640,000 | |
| | Oct. 22, 1868 ..... | | Oct. 21, 1868 | 640,000 | |
| | Nov. 20, 1868 ..... | | Nov. 19, 1868 | 640,000 | |
| | Dec. 7, 1868 ..... | | Dec. 7, 1868 | 1,280,000 | |
| | Dec. 15, 1868 ..... | | Dec. 14, 1868 | 640,000 | |
| | Dec. 17, 1868 ..... | | Dec. 16, 1868 | 640,000 | |
| | Dec. 24, 1868 ..... | | Dec. 23, 1868 | 640,000 | |
| | Dec. 24, 1868 ..... | | Dec. 24, 1868 | 640,000 | |
| | July 15, 1870 ..... | | Nov. 21, 1868 | 1,512 | |
| January 1, 1899 ..... | Jan. 29, 1869 ..... | | Jan. 29, 1869 | 640,000 | |
| | Feb. 10, 1869 ..... | | Feb. 10, 1869 | 1,280,000 | |
| | July 22, 1869 ..... | | July 16, 1869 | 640,000 | |
| | Nov. 10, 1869 ..... | | July 16, 1869 | 437,000 | |
| | July 14, 1870 ..... | | July 16, 1869 | 160,000 | |
| Total ... | ..... | ..... | ..... | ..... | 27,2 |

That said Subsidy Bonds so issued by the United States to said railroad company were by said railroad company sold, and the proceeds of such sales applied to its own use in aid of the construction and equipment of its said railroad.

5. That the provisions of the original, amended and supplemental Acts of Congress hereinbefore and in the bill of complaint of the United States of America referred to, and the issue and delivery of said Subsidy bonds, as provided in said Acts of Congress, create and constitute an *ipso facto* mortgage and lien, as in said Acts of Congress provided, in favor of the United States, to secure the repayment to the United States of the amount of said Subsidy Bonds so issued and delivered to said The Union Pacific Railroad Company, together with all interest thereon which should have been paid by the United States, which said mortgage and lien are herein designated the Subsidy Lien.

The said Subsidy Lien is a mortgage and lien upon the whole line of railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and description, and in consideration of which bonds were issued formerly belonging to the Union Pacific Railroad Company, with all the rights, functions, immunities and appurtenances thereunto belonging, and upon all the property, estate, rights and franchises of every kind and description granted or conveyed by the United States to said The Union Pacific Railroad Company, and also as and to the extent by law provided upon all the estate and property, real, personal and mixed, assets and income of the said The Union Pacific Railroad Company, from whatsoever source derived, subject to any lawfully prior and paramount mortgage, lien or claim thereon, including all estate, property and assets derived by the said defendant The Union Pacific Railway Company from the said The Union Pacific Railroad Company, by virtue and force of said consolidation.

6. That of said Subsidy Bonds of the United States so issued and delivered to the said The Union Pacific Railroad Company by the Secretary of the Treasury of the United States $4,320,000 of the principal thereof matured on February 1st, 1896, and the same, together with all interest then due thereon, were then paid by the United States; and $3,840,000 of the principal thereof matured on January 1st, 1897, and the same, together with all interest then due thereon, were then paid by the United States.

Subsidy Bonds of the United States remain outstanding and unpaid to the par value of $19,076,512, of which $15,919,512 will mature on January 1st, 1898, and $3,157,000 will mature on January 1st, 1899.

That all of the interest on all of said Subsidy Bonds, of the United States has been paid by the United States as the same has from time to time matured.

7. That sums of money have been paid to and received by the United States, and further sums of money, representing compensation earned by The Union Pacific Railroad Company and the said The Union Pacific Railway Company and the said Receivers for the performance of service for the Government, have been lawfully retained by the United States, and a portion of the sums so received and retained have been credited to what is known as the "Bond and Interest Account," and said portion of the said sums so credited aggregated on the first of April, 1897, the amount of $16,256,321.29, which last mentioned amount the said The Union Pacific Railroad Company and its said successor The Union Pacific Railway Company were entitled to have credited and which have been by the United States credited towards and in partial repayment of the interest paid by the United States upon said Subsidy Bonds; and further sums representing such earnings have been likewise lawfully retained by the United States, which have been credited to said Union Pacific Railway Company or with which said company is entitled to be credited, but the extent whereof is incapable of exact statement at the date of this decree, but such credits and the current additions to the Sinking Fund hereinafter mentioned have not exceeded the accumulation of the Subsidy debt. The total amount of indebtedness on account of said Subsidy Bonds, matured and unmatured, for principal and interest, after deducting the said amount received by the United States upon said interest account, was, on April 1st, 1897, as nearly as such account can be now stated:

| | |
|---|---|
| For principal | $27,236,512.00 |
| For balance of interest account | 30,525,918.00 |
| Total | $57,762,430.00 |

8. That under and in pursuance of the provisions of the Act of Congress of the United States, approved May 7th, 1878, of said sums of money so paid to and received by

the United States and of said sums of money representing compensation for the performance of service to the Government so retained by the United States, the total amount of $19,217,713.40 had, on and before the 31st day of December, 1896, been received in the Treasury of the United States and in part invested by the Secretary of the Treasury in certain bonds which are held in and constitute in part the Sinking fund established by said last mentioned Act of Congress, so far as the same relates to The Union Pacific Railroad Company, and its successor, The Union Pacific Railway Company, and so far as the same is known as the United States Union Pacific Sinking Fund. That said United States Union Pacific Sinking Fund consists of cash and of bonds, and the bonds therein are as shown in the following tabulated statement, which statement also shows which of said bonds are not due and which of said bonds are due and the rates of interest, dates of maturity, dates when interest is payable and dates of last payment of interest as to each class of bonds embraced in said Sinking Fund:

## *Statement of Bonds in the United States Union Pacific Sinking Fund.*

| Bonds | Not Due | Due But Unpaid | Rate of Interest | Maturity of Bond | Interest Payable | Date of last payment of Interest |
|---|---|---|---|---|---|---|
| | | | (per cent) | | (1st day of) | |
| U. S. 5% of 1904 | $915,750 | | 5 | Feb. 1, 1904. | Feb. May. Aug. Nov | Feb. 1, 1897. |
| U. S. 6% of 1898 | 523,000 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| U. S. 6% of 1899 | 41,000 | | 6 | Jan. 1, 1899. | Jan'y July | Jan. 1, 1897. |
| First Mortgage Bonds: | | | | | | |
| Union Pacific due Jan'y 1, 1896 | | $929,000 | 6 | Jan. 1, 1896. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1897 | | 350,000 | 6 | Jan. 1, 1897. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due July 1,1897 | 473,000 | | 6 | July 1, 1897. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1898 | 1,534,000 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due July 1, 1898 | 2,536,000 | | 6 | July 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Union Pacific due Jan'y 1, 1899 | 545,000 | | 6 | Jan. 1, 1899. | Jan'y July | Jan. 1, 1897. |
| Central Pacific due Jan'y 1, 1898 | 2,229,000 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Kansas Pacific due Aug. 1, 1895 | | 549,000 | 6 | Aug. 1, 1895. | Feb. Aug | Aug. 1, 1895. |
| Kansas Pacific due June 1, 1896 | | 929,000 | 6 | June 1, 1896. | June Dec | Dec. 1, 1894. |
| Sioux City and Pacific due Jan'y 1, 1898 | 716,500 | | 6 | Jan. 1, 1898. | Jan'y July | Jan. 1, 1897. |
| Central Branch due May 1, 1895 | | 1,025,000 | 6 | May 1, 1895. | May Nov | Nov. 1, 1893. |
| Western Pacific due July 1, 1899 | 350,000 | | 6 | July 1, 1899. | Jan'y July | Jan. 1, 1897. |
| | 9,863,250 | 3,782,000 | | | | |
| Total Bonds in Fund— | | 13,645.250 | | | | |

That the amount of uninvested cash held in and as part of said United States Union Pacific Sinking Fund on April 30th, 1897, was the sum of $3,945,239.89, which said amount is now held in and as part of said Sinking Fund, together with, and subject to be increased by, certain further amounts representing earnings for the performance of service for the Government credited and current y to be credited to the said sinking Fund, the extent of which amounts is incapable of exact statement as of the date of this decree.

That said United States Union Pacific Sinking Fund so established and as the same exists, is applicable to the payment and satisfaction of the Subsidy Bonds so issued and delivered by the United States to the Union Pacific Railroad Company and of all the interest paid by the United States hereon and not reimbursed, as and upon the conditions provided in said Act of May 7th, 1878.

9. That no part of the cost or expense of the payment of said Subsidy Bonds of the United States, which have been paid as hereinbefore found, has been contributed by the said The Union Pacific Railroad Company nor by the defendant herein The Union Pacific Railway Company, except as herein stated, and no payment has been made nor security given on account of the principal of said Subsidy Bonds by said original or successor company (otherwise than as such security has resulted from the operation of law) except such security as is constituted by the Sinking Fund hereinbefore mentioned.

That the defendant The Union Pacific Railway Company has made default in the repayment to the United States of the amount of the Subsidy Bonds, so issued and delivered to the said The Union Pacific Railroad Company, which matured on the first day of February, 1896, and in the payment of the amount of the said subsidy Bonds so issued and delivered which matured on the first day of January, 1897, and in the repayment to the United States of all of the interest paid by it upon said Subsidy Bonds which so matured at the dates aforesaid, except to the extent of the partial repayment and reimbursement of such interest by the application of the amounts paid to and retained by the the United States and credited to said Bond and Interest Account as hereinbefore found.

That the indebtedness of the said The Union Pacific Railway Company secured by said Subsidy lien, which has

matured and is now due to the United States for the repayment of the amounts paid by the United States upon the principal of said matured Subsidy Bonds and for repayment of the interest paid by the United States upon said matured Subsidy Bonds in excess of the amount of said Bond and Interest Account heretofore applied as aforesaid to the payment of said interest, is as follows:

| | |
|---|---|
| For the principal of Subsidy Bonds matured February 1st, 1896 | $4,320,000.00 |
| For interest paid thereon and not reimbursed April 30, 1897 | 5,401,138.83 |
| For the principal of Subsidy Bonds matured January 1st, 1897 | 3,840,000.00 |
| For interest paid thereon and not reimbursed April 30, 1897 | 4,928,490.35 |
| Total amount of matured principal and unreimbursed interest on April 30, 1897 | $18,489,629.18 |

10. That the Union Pacific Railroad Company under and in pursuance of the power and authority conferred upon it by the said Acts of Congress of the United States approved July 1st, 1862, and July 2d, 1864, and the Act of Congress approved February 24th, 1871, built and constructed as a part of its said line of railroad said bridge across the Missouri River between Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska, together with the approaches thereto and appurtenances thereof, and said Railroad Company for the purpose of purchasing and acquiring the lands and materials necessary for the construction of the said bridge and its approaches and connecting lines, and for constructing the same, and pursuant to the authority of said Act of February 24th, 1871, and to due corporate action, issued its bridge Bonds, each for the sum of one thousand dollars United States gold coin, or two hundred pounds British sterling money, the principal of which was payable on the first day of April, 1896, unless sooner redeemed, with interest in the meantime from the first day of April, 1871, on the principal sum at the rate of eight per centum per annum, payable in half yearly installments of forty dollars each in United States gold coin, or eight pounds five shillings and nine pence British sterling money, each on the first day of October

and first day of April in each year, upon presentation of the coupons attached to the said bonds; and, for the purpose of securing payment of said bonds and interest, said Railroad Company, pursuant to like authority of law and corporate action, made, executed and delivered to John Edgar Thomson, John Pierpont Morgan, and Elisha Atkins its mortgage dated on the first day of April, 1871, wherein and whereby it granted, bargained, sold, assigned, transferred, set over, enfeoffed, conveyed, and confirmed to said Trustees and to their heirs and successors and the survivors and survivor of them and the heirs of such survivor, all and singular the said bridge over the Missouri River between Omaha and Council Bluffs, and the approaches thereto and appurtenances belonging thereto, including all parts and portions of the said bridge then constructed or thereafter to be constructed; and the depots at Council Bluffs and Omaha aforesaid, and the lines and tracks required to perfect the said bridge, its approaches appurtenances, and to connect the same with the neighboring lines, including in said conveyance as well the lines and tracks then constructed or those which might thereafter be constructed, and also all estates, terms and rights of way for the said bridge approaches acquired by it, and all the rights and privileges of the company, in, or to the said bridge, approaches or appurtenances, or touching and concerning or appertaining to the maintenance, use and occupation thereof.

That on or about the 27th day of September, 1871, said The Union Pacific Railroad Company, made, executed and delivered to the said John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as Trustees, its supplemental mortgage, bearing said last mentioned date, in which supplemental mortgage it was provided, among other things, that all the said bonds should bear interest at the rate of two-fifths of one per cent per annum, in addition to the annual eight per cent interest provided for in the said mortgage dated April 1st, 1871, which said interest of two-fifths of one per cent should be paid in a gross of ten per cent upon the nominal amount of the bond, when the principal of the bond should become payable under the terms or conditions of said indenture, excepting always that those bonds which should be drawn and redeemed at ten per cent per annum before maturity by the Sinking

Fund should not carry said interest at two-fifths of one per cent; and the trustees under said mortgage were authorized and empowered to retain and deduct and to pay and discharge such installment of interest out of any funds or moneys of the company coming into their hands.

That said bonds so issued and secured by said Bridge Mortgage of April 1, 1871, and said supplemental mortgage of September 27th, 1871, are outstanding and unpaid in the face amount of $392,000, and that all said bonds matured and became due on and prior to April 1st, 1896, and that under the terms of the said mortgage and said supplemental mortgage, the principal amount due on said bonds is the face amount thereof and ten per cent. in addition thereto, being the sum of $431,000, together with interest at the rate of six per cent. per annum from the 1st day of April, 1897, to which date the interest upon said bonds has been paid. That said Bridge Mortgages to the extent of said sum and interest constitute the first and best lien upon the premises embraced therein and covered thereby.

That the said John Edgar Thomson and Elisha Atkins have since died, and the said John Pierpont Morgan, by survivorship, and Edwin F. Atkins, by due appointment, are now the Trustees under the said Bridge Mortgage of April 1st, 1871, and the supplemental indenture of September 27th, 1871.

11. That the said The Union Pacific Railway Company thereafter, pursuant to like authority of law, and to due corporate action did, for the purpose of funding and renewing the debt then remaining unpaid secured by said Bridge Mortgage of the Union Pacific Railroad Company of April 1st, 1871, and September 27th, 1871, its certain bonds of one thousand dollars each, dated the 1st day of October, 1885, payable on the 1st day of October, 1915, in gold coin of the United States of the then present weight and fineness, and bearing interest at the rate of five per cent. per annum, payable semi-annually on the first day of October and April in each year, in like gold coin, on presentation and surrender of the coupons therefor, annexed to said bonds; and likewise, pursuant to law and due corporate action, the said The Union Pacific Railway Company, in order to secure the payment of the principal and interest of said last mentioned bonds, made, executed and delivered

to the Central Trust Company of New York, as Trustee, its mortgage or deed of trust, dated on the first day of October, 1885, and known as its Omaha Bridge Renewal Mortgage, whereby the said Railway Company granted, bargained, sold, assigned, transferred and conveyed unto the said Central Trust Company of New York, as Trustee, and to its successors and assigns, all and singular the bridge approaches and appurtenances thereto over the Missouri River, between Council Bluffs, Iowa, and Omaha, Nebraska, mentioned and described in said Act of Congress, approved February 24th, 1871, together with the rents, earnings, issues, tolls, incomes and profits thereof, including all parts and portions of said bridge then constructed, or thereafter to be constructed and, the depots at Council Bluffs and Omaha aforesaid, and the railroad thereover and the lines and tracks required to perfect the said bridge, its approaches and appurtenances and, to connect the same with the lines of any railroads that were then or should thereafter be constructed to the Missouri River at Council Bluffs, Iowa, or Omaha, Nebraska, and also all the estates, lines, rights of way, as well then held by the Company as to be hereafter acquired by it, and all the rights and privileges of the company of, in or to the said bridge, approaches and appurtenances, or touching, concerning or appertaining to the maintenance, use and occupation thereof, and also all and singular the franchises then owned, possessed or acquired, or which should thereafter be owned, possessed or acquired by the said Railway Company in respect of said bridge, approaches or appurtenances thereto and the railroad thereover.

That there were certified and delivered to the said Railway Company $1,056,000 of said bonds, and of said bonds so certified and delivered $589,000 were negotiated and sold by said company and $145,000 were by said company pledged and remain pledged to secure certain of its indebtedness; and $322,000 of said bonds were undisposed of by said company and remained in its possession, and are now in the hands of the said receivers and have never been issued and are not outstanding, and the said defendants receivers and the defendant The Union Pacific Railway Company are hereby perpetually enjoined from issuing, negotiating or delivering the same, and, in the event of the confirmation of any sale of the railroad property made as

herein provided, they are hereby further ordered and directed to cancel the said bonds.

That the amount of the outstanding principal of said bonds secured by said Omaha Bridge Renewal Mortgage of October 1st, 1885, and the amount of the unpaid coupons on said outstanding bonds are as follows:

| | |
|---|---|
| Principal amount of bonds sold and disposed of by said Railway Company | $734,000 |
| Interest thereon from April 1st, 1894, to April 1st, 1897 | 110,100 |
| Total | $844,100 |

And that to the extent of said bonds and interest said Omaha Bridge Renewal Mortgage of October 1st, 1885, constitutes and is the next and second lien on so much of said Union Pacific Railway as is embraced and described therein.

12. That the said The Union Pacific Railroad Company, pursuant to and in accordance with the powers conferred upon it by law, and pursuant to due corporate action, and for the purpose of providing means to construct and complete its said railroad, did duly make, execute and issue under its corporate seal, and did deliver to various persons, firms and corporations, for value and for the considerations and purposes and in the manner provided by its first mortgage hereinafter mentioned, its First Mortgage Bonds to the number of 27,229, in the aggregate amount of $27,229,000, all of which bonds were, as issued and delivered, duly certified by the Trustees named in said mortgage as herein provided, and all of which bonds are now outstanding, and in each of which bonds the said The Union Pacific Railroad Company promised to pay the sum of one thousand dollars, to the holder thereof at its office in the City of New York, thirty years after the date thereof, and also interest thereon at the rate of six per cent. per annum, payable semi-annually from the date thereof in lawful money of the United States until the principal sum should be paid, on presentation of the interest coupons annexed thereto, at the office of the said Company in the City of New York; and said bonds were issued in the installments, and bearing the dates, and maturing at the respective dates following:

Said bonds, to the amount of $6,475,000, were issued, bearing date the first day of January, 1866, and maturing by the terms thereof, on the first day of January, 1896.

Said bonds, to the amount of $1,598,000, were issued, bearing date the first day of January, 1867, and maturing by the terms thereof, on the first day of January, 1897.

Said bonds, to the amount of $1,920,000, were issued, bearing date the first day of July, 1867, and maturing, by the terms thereof, on the first day of July, 1897.

Said bonds, to the amount of $5,999,000, were issued, bearing date the first day of January, 1868, and maturing, by the terms thereof, on the first day of January, 1898.

Said bonds, to the amount of $8,837,000, were issued, bearing date the first day of July, 1868, and maturing, by the terms thereof, on the first day of July, 1898.

Said bonds, to the amount of $2,400,000, were issued, bearing date the first day of January, 1869, and maturing, by the terms thereof on the first day of January, 1899.

13. That pursuant to and in accordance with the powers conferred upon it by said legislation, and pursuant to due corporate action and for the purpose of securing the payment of the bonds aforesaid, issued and to be issued, with the interest due and to grow due thereon, and for other lawful considerations, the said The Union Pacific Railroad Company did make and execute under its corporate seal and did deliver to Edwin D. Morgan, of the City of New York, and Oakes Ames, of Easton, in the State of Massachusetts, as Trustees, a mortgage or deed of trust dated the first day of November, 1865, wherein and whereby the said The Union Pacific Railroad Company did bargain, sell, assign, transfer and set over, enfeoff, convey and confirm unto the said Edwin D. Morgan and Oakes Ames, as Trustees, and in trust for the purposes aforesaid, and to the survivor of them, and to their successor or successors, all and singular the railroad, telegraph, property and franchises in said mortage described as follows:

"All and singular the railroad and telegraph of the said party of the first part (the said Union Pacific Railroad Company), heretofore constructed, or hereafter to be constructed, from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms and provisions of said Acts of Congress, to-wit: at the City of Omaha, in the

Territory of Nebraska; thence, as provided in said Acts of Congress, through the teritories of the United States to the western boundary of the late territory of Nevada, together with all its lands, tenements, hereditaments, rights of way and easements, acquired or appropriated, or which shall be hereafter acquired or appropriated, for the purpose of a right of way for a single, double or other track, railroad, and telegraph line, and for depots, engine houses, car-houses, station houses, warehouses, machine shops, superstructures, erections and fixtures, being necessary for the use of said railroad or te'egraph; and also all and singular the franchises now owned, possessed or acquired, or which shall be hereafter owned, possessed or acquired, by the said party of the first part, for the purpose of building and operating said railroad and telegraph above specified and described; and also all the rails, depots, yards, engine-houses, car-houses, station-houses, warehouses, machine shops, work shops and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired by said party of the first part, necessary to said railroad and telegraph line, or the running and operating the same."

That subsequently and on or about the 12th day of March, 1868, the said The Union Pacific Railroad Company as thereto authorized by law and in pursuance of due corporate action, made and entered into an agreement or indenture supplemental to said mortgage of November 1st, 1865, with said Edwin D. Morgan and Oakes Ames, Trustees, dated the said 12th day of March, 1868, wherein and whereby the said The Union Pacific Railroad Company for the consideration therein expressed, agreed with the said Edwin D. Morgan and Oakes Ames, Trustees, for the benefit of all who then were or should thereafter be ho ders of said First Mortgage Bonds, and to and with the successors of said trustees in the trust created by said indenture of mortgage of November 1st, 1865, that the principal of all said First Mortgage Bonds, being one thousand dollars each, as well such as had then been issued as such as should thereafter be issued, should and would be paid by the said Railroad Company, whensoever they should respectively become payable according to the tenor thereof, in gold coin of the United States at par; that is to say, one thousand dollars of such coin for each of said bonds, and thereafter

The Union Pacific Railroad Company or its successor company, The Union Pacific Railway Company, caused to be stamped upon such of said First Mortgage Bonds, issued and secured by the said mortgage of November 1st, 1865, as were presented for that purpose, a provision to the effect that the same should be payable in United States Gold Coin.

14. That said Edwin D. Morgan and Oakes Ames, duly accepted said mortgage of November 1st, 1865, and the trusts thereunder, and continued to be and act as the trustees thereof, until their deaths, respectively. That on May 8th, 1873, the said Oakes Ames died, and on December 3d, 1873, Oliver Ames was duly appointed Trustee in the place and stead of the said Oakes Ames; and the said Oliver Ames, afterwards, to-wit: on March 9th, 1877, died and on June 1st, 1881, Frederick L. Ames was duly appointed Trustee in the place and stead of the said Oliver Ames. That on February 14th, 1883, Edwin D. Morgan died, and on March 6th, 1883, F. Gordon Dexter, one of the aforesaid defendants, was duly appointed successor trustee in the place and stead of said Edwin D. Morgan. That on September 13th, 1893, Frederick L. Ames died, and on October 12th, 1893, Oliver Ames 2d, one of the aforesaid defendants, was duly appointed Trustee under said mortgage in the place and stead of said Frederick L. Ames. That each of the said trustees, original and successor, duly accepted the said mortgage and the trusts thereunder, and said F. Gordon Dexter and Oliver Ames 2d, now are the trustees under said mortgage, and the said agreement of March 12th, 1868, supplemental thereto.

15. That the lien of the said First Mortgage of November 1st, 1865, and of each of said Bridge Mortgages hereinbefore described, viz: the mortgages to John Pierpont Morgan and Edwin F. Atkins, as Trustees, and to the Central Trust Company, as Trustee, respectively, is subject and subordinate to the right of the Government to have the preference, at all times, in the use, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the telegraph line and railroad embraced in said mortgage for the transmission of despatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon such

railroad for the Government whenever required by any department thereof.

And each and all of said mortgages and liens are subordinate and inferior to the title of the American Loan and Trust Company shown by the Equipment Trust Indenture of the Union Pacific Railway Company to the American Loan and Trust Company, dated October 1st, 1887, to the extent and so far as the said indenture affects the portion of the equipment therein embraced, which is hereinafter decreed to pertain to the mortgaged premises covered by said First Mortgage, and to the extent of the purchase money indebtedness herein found to be outstanding as recited in said Equipment Trust Indenture, and upon payment of which by said Union Pacific Railway Company, its successors and assigns or some one for it, said last named Company or such successors or assigns will become and be the owner of full title and possessed in complete ownership of all the equipment described in said Equipment Trust Indenture; and that the amount of said indebtedness secured by said Equipment Trust Indenture was on the first day of April, 1897, the sum of $507,000.

That said First Mortgage of November 1st, 1865, is with the exception of said Equipment Trust Indenture and said Omaha Bridge Mortgages above mentioned, a valid and subsisting first mortgage and lien superior and paramount to any and every lien, estate, right, title, interest or claim of any person, party or corporation whomsoever, including the United States of America, upon al the railroad, telegraph, premises, rights, franchises lands and property described in said mortgage, including the railroad, right of way and railroad property of the Union Pacific Railway Company extending from the eastern terminus of the said The Union Pacific Railway on the east line of the said Railway Company's property between Twelfth Avenue and Thirteenth Avenue in Council Bluffs, Iowa, in a westerly direction to Twentieth Street in Omaha, Nebraska, including the railroad and railroad bridge across the Missouri River, and also extending from the initial point of construction of the Union Pacific Railroad near the northeast corner of and within section 10 township 15, range 13, east of the 6th principal meridian, to Omaha, Nebraska, thence in a southerly and westerly direction through the City of Omaha to Twentieth Street in said City of Omaha

at a junction with that part of said railroad from Council Bluffs aforesaid and extending thence in a westerly direction through the counties of Douglas, Sarpy, Dodge, Colfax, Platte, Merrick, Hall, Buffalo, Dawson, Lincoln, Keith, Deuel, Cheyenne and Kimball in the State of Nebraska, and Sedgwick County in the State of Colorado, and the counties of Laramie, Albany, Carbon, Sweetwater and Uintah in the State of Wyoming, and the Counties of Summit, Morgan, Davis and Weber in the State of Utah, to a junction with the Central Pacific Railroad at a point five miles west of Ogden in the State of Utah, a distance of 1,042.41 miles of main line railroad; and also the rights of way, railroads and railroad tracks constituting spurs or branch lines of railroad extending from points of junction with the said main lines (1) at a point about six-tenths of a mile west of what is known as Transfer Depot at Council Bluffs, in a northeasterly direction to what is known as the Broadway Depot in said city, a distance of 1.72 miles in the City of Council Bluffs; (2) at Almy Junction Wyoming, in a northerly direction to a terminus at Mine No. 7, a distance of 3.88 miles; (3) at Cheyenne, Wyoming, in a northwesterly direction to a connection with the track of the Union Pacific, Denver & Gulf Railway, a distance of 2.02 miles; (4) at a point on said main line in Omaha, Nebraska, northerly and easterly, a distance of 18,000 feet to certain ice-houses and industries on what is known as Cut-Off Lake; also lots, yards, terminal grounds, shop grounds, streets and alleys, lands and tracts of land, tenements and hereditaments, easements and rights of way owned or acquired or appropriated by or for the Union Pacific Railroad Company, The Union Pacific Railway Company or the said Receivers for the purposes of said lines of railroad, including all lands so acquired or appropriated the title to which stands in the names of trustees for said The Union Pacific Railway Company; and also all lands acquired for or used for stations or for terminal purposes and also all rights and estates, legal and equitable, of The Union Pacific Railway Company in and to all stations, depots and in and to all union depots upon or connected with the line of its railway or used in connection therewith; and including all the lands and other property designated in the said report of the Special Master and in the schedules therein embraced, numbered 1, 2, 3, 4 and 5 of said property, being property

owned, acquired and appropriated and necessary to the use and operation of the said railroad; also the shops, freight depots, general office building, round-houses, depots, engine houses, car houses, station houses, machine shops, workshops, rails, switches, turnouts, spurs, side tracks, sidings and other structures, and facilities upon said mortgaged premises, constructed, acquired or owned for the purpose of or in connection with said lines of railway; also the lands, interests and easements in lands, pipes, pump-houses, structures, pipe lines, appliances, facilities and easements of said company pertaining to the water supply upon or along said lines of railroad, and the tools, appliances, fixtures, material and supplies owned or acquired for the purposes thereof; also the locomotives, passenger cars, Pullman sleeping cars, dining cars, freight cars and other cars and all other equipment and rolling stock owned by The Union Pacific Railway Company, and all interest of said The Union Pacific Railway Company in any other equipment or rolling stock to the extent that said equipment and rolling stock so owned or in which the said railway company has any interest was acquired or provided for or by said railway company for the purposes of said railroad and mortgaged premises or is necessary for the running and operation thereof, the same being the undivided seventy per cent. of all the rolling stock or equipment owned by The Union Pacific Railway Company or in which said company has any interest; also all the lines of telegraph, telegraph material, instruments, fixtures and appliances belonging to the said Railway Company and located upon or used in connection with said mortgaged premises; also all furniture, fixtures, appliances, apparatus, supplies and material owned, acquired or provided by said company for use in connection with said railroad and mortgaged premises, located in the various offices of said railway company upon or remote from said railroad, including the offices of said company in the Cities of Omaha, Nebraska, and Boston, Massachusetts, and also all the property of said The Union Pacific Railway Company and all its rights and interests in and to property of every kind and nature, whether of the character herein described or otherwise, and the corporate rights and franchises of said The Union Pacific Railroad Company or its successor The Union Pacific Railway Company, so far as property,

ghts, interests and franchises pertain to the said railroad, legraph and mortgaged premises; also all the moneys, edits and property not herein otherwise specified, in the ossession of or under the control of the said Receivers, or which said Receivers are or may be entitled, which ave been or may be derived by said Receivers from or on ccount of said mortgaged premises, or from the sale or ther disposition of any of said property or from the operation of the said mortgaged premises by said Receivers, ubject to the charges of the Receivers in respect thereof.

16. That the defendant the Union Pacific Railway ompany made default in the payment of all of the interest, nd of the coupons representing such interest, which became due upon its said First Mortgage Bonds on the first ay of July, 1894, although payment of interest due on n that date was duly demanded by holders of said bonds, nd said default cont nued in whole until the 27th day of November, 1894, when an amount equal to the face of the nterest coupons matured July 1st, 1894, was paid to the nolders thereof, but no interest then accrued upon aid coupons was paid, although payment of such accrued nterest was demanded. and all of the interest upon said defaulted coupons matured on the first day of July, 1894, remains unpaid, together with interest thereon from the said 27th day of November, 1894. And the said The Union Pacific Railway Company made default in the payment of each subsequent semi-annual installment of interest which fell due upon said Bonds at the time of the maturity thereof, respectively, although payment of each of said installments was duly demanded but said semi-annual installments of interest were, under orders of this court, paid by the defendant receivers, together with interest upon such installments as follows: the installment due on the first day of January, 1895, was paid by the said Receivers on the 20th day of January, 1896; the installment due on the 1st day of July, 1895, was paid by the said Receivers on the 8th day of May, 1896; the installment due on the 1st day of January, 1896, was paid by the said Receivers on the 25th day of September, 1896, the installment due on the 1st day of July, 1896, was paid by the said Receivers on the 19th day of November, 1896, and the installment due on the 1st day of January, 1897, was paid by the said Receivers on the 2d day of March, 1897, and the install-

ment due on the 1st day of July, 1897, was paid by the said Receivers on the 26th day of July, 1897.

That the said bonds secured by said first mortgage of November 1st, 1865, six thousand four hundred and eventy-five (6,475) in the principal amount of six million four hundred and seventy-five thou and dollars ($6,475,000) became due and payable on the first day of January, 1896, and payment thereof was duly demanded; and that of said bonds one thousand five hundred and ninety-eight (1,598) in the principal amount of one million five hundred and ninety eight thousand dollars ($1,598,000) became due and payable on the first day of January, 1897, and payment thereof was duly demanded and that of said bonds one thousand nine hundred and twenty (1,920) in the principal amount of one million nine hundred and twenty thousand dollars ($1,920,000) became due and payable on the first day of July, 1897.

That the said The Union Pacific Railway Company made default in the payment of the said principal amounts of said bonds which matured on the first day of January, 1896, and on the first day of January, 1897, and on the first day of July, 1897, as aforesaid; and that the same remain due and unpaid, and the following amounts are now due and payable at the date of this decree for unpaid interest on the said coupons which matured July 1st, 1894, and for principal of said outstanding First Mortgage bonds already matured, viz:

| | |
|---|---|
| For unpaid interest on coupons of July 1, 1894 | $ 19,877.17 |
| For principal of bonds matured July 1, 1897 | 9,993,000.00 |

That certain coupons pertaining to some of said First Mortgage bonds have never been presented for payment and remain unpaid, and certain semi-annual accrued interest upon said First Mortgage bonds now matured has never been demanded or collected by the holders thereof, and such unpresented and unpaid coupons and such unpaid interest upon said unpresented matured bonds amount to the sum of $102,930.

That the First Mortgage aforesaid is, subject to the title of the American Loan & Trust Company to the equipment aforesaid, and to the lien of Bridge Mortgages aforesaid viz: to John Pierpont Morgan and Edwin F. Atkins, as

Trustees, and to the lien of the Central Trust Company as Trustee, respectively, the first and best lien upon the premises embraced in said mortgage including the said bridge and approaches and seventy per cent of the equipment of the Union Pacific Railway Company as herein described, subject only to the exception of a preferential right in favor of the United States to transportation at reasonable rates as more fully recited elsewhere herein; and the Court further finds that the mortgage and lien of the United States of America in favor of said Subsidy bonds is the next best lien to the lien of said First Mortgage on all the property embraced therein and ranks in order of encumbrance next after the same.

17. That on the 21st day of January, 1895, the said F. Gordon Dexter and Oliver Ames 2d. as Trustees, filed their bill of complaint in the Circuit Court of the United States for the District of Nebraska, wherein they set up and alleged the existence and obligation of the First Mortgage aforesaid, and the defaults aforesaid existing at that time in the non-payment of interest and principal of said mortgage bonds and prayed for the foreclosure of said mortgage for the appointment of Receivers of the Union Pacific Railway from Council Bluffs, Iowa, to a point five miles west of Ogden, Utah, together with its branches, equipment and franchises, and for the sale thereof, and the application of proceeds of such sale to the payment of said bonds and interest. They also alleged that said Railway Company was insolvent, and was in the possession of Receivers appointed by said court in a certain suit brought in October, 1893, by said Oliver Ames 2d and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edwin F. Atkins, complainants, against the Union Pacific Railway Company and others, and in said suit first named brought by said Dexter and Ames, as Trustees, such proceedings were had that on the said 21st day of January, 1895, said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert were appointed Receivers of all and singular the railway property and equipment of said Union Pacific Railway Company between Council Bluffs and a point five miles west of Ogden, as described and embraced in said First Mortgage of November 1, 1865, and were ordered and

directed to operate and manage the same so as to secure the best results therefrom for the protection of, and payment of the debts due to the holders of said First Mortgage Bonds, and said Receivers qualified and took possession of said railway and property including said equipment, and have maintained and operated the same under the direction of this Court, from that time until the present, and are now in the possession thereof and engaged in maintaining and operating the same under orders of this Court for the purpose aforesaid; and that the possession and title of said Receivers is superior in right to any claim of the United States of America, complainants, upon their Subsidy lien bonds as asserted in their said Bill of Complaint, and also to the Sinking Fund Mortgage hereinafter described and the rights of the trustees thereunder and of the holders of bonds secured thereby, but is junior and subject to the preferential right of the United States for the transmission of dispatches and transportation of mails troops and munitions of war, supplies and public stores, at reasonable rates, as in this decree found, and is also subject and junior to the title of the American Loan & Trust Company under said equipment Trust Indenture, and is also junior and subordinate, so far as the line between Council Bluffs and Bridge Junction in Omaha is concerned and so far as the bridge across the Missouri River between Council Bluffs and Omaha is concerned, to the lien of the Omaha Bridge Mortgages, viz: those held by J. Pierpont Morgan and Edwin F. Atkins, as trustees, as aforesaid, and that held by the Central Trust Company of New York, as Trustee aforesaid, and to the liens and claims of the holders of bonds secured thereby.

18. That the Union Pacific Railroad Company under and in pursuance of the power and authority conferred upon it by the Acts of Congress aforesaid, and for the purpose of paying certain outstanding land grant mortgage and income bonds, made, executed and delivered its mortgage indenture known as its Sinking Fund Mortgage, dated on the 18th day of December, 1873, to The Union Trust Company, of New York, Trustee, wherein and whereby for the purpose aforesaid and for the purpose of securing the payment of the principal and interest of the coupon bonds of said company amounting to the sum of sixteen million dollars in gold coin of the United States or three million

two hundred thousand pounds British Sterling money, said coupon bonds being in number 16,000 and for the sum of one thousand dollars gold coin of the United States, or Two hundred pounds English Sterling money numbered from 1 to 16,000 inclusive, the principal being payable on the 1st day of September, 1893, in gold coin, unless sooner redeemed with interest at the rate of eight per cent. per annum current money of the United States, or seven per cent. British Sterling money, at the option of the holder, payable on the 1st day of March and the 1st day of September in each year, the said Union Pacific Railroad Company granted, bargained, sold, released, conveyed and confirmed to the Union Trust Company and its successor as trustee, all the right, title, estate and interest of the said railroad company of, in and to its railroad, extending from the City of Omaha, in the State of Nebraska, to a point about five miles west of the City of Ogden, in the Territory of Utah, and its appurtenances, together with all its lands, tenements, hereditaments, rights of way and easements acquired or owned, or which should be thereafter acquired or owned, for the purpose of a right of way for a single, double or other track railroad and for depots, engine houses, car houses, station houses, warehouses, machine shops, superstructures, erections, fixtures and appurtenances and property necessary or convenient for the use of said railroad; also all the rails, depots yards, engine houses, car houses, warehouses round houses machine shops, work shops and other structures and fixtures of the said party of the first part, and also all goods and chattels then owned or which should thereafter be owned or acquired by said party of the first part, necessary or convenient to said railroad, or the running and operation of the same, or used or employed therein, or in connection therewith, subject, however, to said conveyance in trust and mortgage so made to the said Morgan and Atkins, and also to the said Subsidy lien or mortgage of the United States; also all and singular the lands granted to said Railroad Company by the said Acts of Congress, and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in or to the same, or any part or parcel thereof, which the said Railroad Company then held, owned, or was entitled to, or thereafter might, or should acquire, have, hold, own, or be or become entitled to by force or virtue of said Acts of Congress, saving and excepting all parts and parcels of said

lands which should have been, previous to the execution of this said mortgage, conveyed or contracted to be conveyed by said Railroad Company to purchasers thereof.

That under the terms and provisions of said Sinking Fund Mortgage and in accordance therewith, said Railroad Company issued its bonds secured thereby in the total amount of $16,000,000, which bonds were duly certified by said trustee and were sold by said Railroad Company and the proceeds derived from such sale were by it applied according to the terms and provisions of said mortgage.

That there had been on August 29th, 1893, paid and cancelled of said bonds so issued under said mortgage $11,838,000 of the principal thereof, together with the interest thereon, and on said last mentioned date, said Railway Company entered into an agreement with said Union Trust Company of New York, as Trustee, providing for the extension of the time of payment of said bonds then remaining unpaid until the first day of September, 1899. That there are now outstanding of said bonds secured by said mortgage of December 18th, 1873, 3,738 bonds, and that said Company is in default in the payment of the interest on said bonds which matured on the first day of September, 1896, and in the payment of each and every installment of interest on said bonds thereafter matured, and that the amount of the outstanding principal of said bonds and of the matured interest thereon is as follows:

| | |
|---|---|
| Principal of said Sinking Fund Bonds outstanding | $3,738,000 |
| Unpaid Coupons thereon at their face | 298,400 |

That said Sinking Fund Mortgage is, to the extent that it includes any railroad, property and franchises embraced in said First Mortgage of November 1, 1865, a lien subject and inferior and subordinate and next in order of incumbrance to the Subsidy lien of the United States, and said Sinking Fund Mortgage is a first and paramount lien upon all the lands and land grant therein described and thereby conveyed.

And the Court hereby reserves for other or further proceedings and decree all rights and equities of the trustee of said Sinking Fund Mortgage and of the holders of bonds secured thereby, not herein determined or adjudged and not

barred or foreclosed by the sale hereinafter provided to be made.

19. That in addition to the sums hereinbefore found to be due from and owing by said defendant railway company, said company is indebted in large sums, of which the payment is overdue, and it has made default in the payment thereof and is unable to pay the same and is wholly insolvent, and it is for the best interests of all concerned that the said railroad, telegraph and equipment with the properties and franchises, rights, functions, immunities and appurtenances of the said railway company embraced in, and covered by the Subsidy Mortgage and the lien of the complainants, should be sold and that provision be made for the payment of the indebtedness of said railway company according to the respective liens and equities of the holders thereof. That the railroad, telegraph, appurtenances, rolling stock, equipment and other property and franchises, rights, functions, immunities and appurtenances of said defendant railway company embraced in said Subsidy Mortgage and lien in favor of the United States, are indivisible and so situated and are of such a nature that the same cannot be sold in parcels without great injury to all the parties in interest and that it is expedient that the same shall be sold as an entirety, as hereinafter provided, subject to the rights of all prior mortgagees and incumbrancers and said Receivers, hereinbefore described, but free and clear and discharged from all the aforesaid junior and subordinate claims and rights of the trustee and bondholders under said Sinking Fund Mortgage, and all other claims and rights, junior and subordinate to those of the United States Subsidy Mortgage and Lien

20. It is Therefore Further Ordered, Adjudged and Decreed, that the defendant, The Union Pacific Railway Company pay, or cause to be paid, within twenty days after the entry of this decree, into the treasury of the United States of America, the amount on the 1st day of April, 1897, due and owing for principal and interest o said Subsidy Lien Bonds, namely, the sum of $18,-487,629.18.

21. It is further Ordered, Adjudged and Decreed, that in default of such payment by the defendant

the said The Union Pacific Railway Company, or by some one claiming under it or for its account, or by some of the defendants herein, within the time aforesaid, all the railroad, rolling stock, telegraph, franchises, rights, functions, mmunities and appurtenances to the same belonging, and also the estate and property of every kind and description embraced in and covered by said Subsidy Mortgage and lien to the United States, and all securities in the said United States Un on Pacific Sinking Fund shall be sold as hereinafter directed, and a l the right, title, estate, interest and equity of redemption of the said defendant The Union Pacific Railway Company and of all persons claiming or to claim under it, and of all the parties to this cause, except the prior incumbrancers and title and lien holders hereinbefore described, viz: those claiming under the American Loan & Trust Company Equipment Indenture, and under the said Omaha Bridge Mortgages to said John Pierpont Morgan and Edwin F. Atkins, as trustees and the Central Trust Company of New York as trustee, respectively and those claiming under the First Mortgage of November 1, 1865, including the Receivers appointed thereunder of, in or to the said railroad, telegraph franchises, rol ing stock and property and every part and parcel thereof, embraced in said Subsidy lien and mortgage, and all the right, estate, interest and equity of redemption of all and each of the parties to this cause, of, in or to the securities in the said Sinking Fund and in and to every part and parcel thereof, shall be forever absolutely barred and foreclosed, saving only the rights herein expressly excepted and reserved.

The said property covered by and embraced in said Subsidy Mortgage and lien, as the same is herein described and defined, shall be sold upon the conditions and in the manner hereinafter provided and directed, at public auction, to the highest bidder or bidders upon the mortgaged premises, at the freight station of The Union Pacific Railway Company, in the City of Omaha, in the State of Nebraska, on a day or days to be fixed by the Special Master hereinafter appointed, and public notice of such sale and the time and place thereof, together with the manner and the terms upon which the said sale is to be conducted, shall be given by the said Special Master by advertisement, which shall describe briefly the property to be sold, the

time and place when and where the sale is to take place, and the conditions upon which it is be to conducted; which advertisement shall be published at least once a week for the term of four successive weeks preceding the day of sale, in at least one newspaper in each of the following cities: namely, New York City, New York; Boston, Massachusetts; Omaha, Nebraska; Denver, Colorado; Cheyenne, Wyoming and Salt Lake City, Utah.

22. Said sale shall be made in the following manner and upon the following terms:

Said property shall be sold as an entirety and in one parcel

The Special Master shall have the power and right to postpone the said sale from time to time, and may, without further notice, proceed with the said sale on any day to which the sale may have been adjourned, and may, at his option give such further notice of sale, in addition to the notice above described, as he may think proper.

The Special Master shall receive no bid from any one offering to bid who shall not have deposited with him, at his office in Omaha, Nebraska, at least five days before the date of sale mentioned in the Special Master's published notice, as a pledge that he will make good his bid in case of its acceptance, the sum of two million dollars ($2,000,000) in cash.

The Special Master shall accept no bid for said railroad, franchises and property less than the sum of $23,000,000 in cash, and unless such sum shall be bid, the Special Master may adjourn the sale and apply to the Court for further instructions.

Upon the acceptance of any bid the person or persons making the same shall forthwith, deposit with the Special Master, on account thereof, a further sum, in cash, which together with the amount which he or they have a ready deposited as a pledge shall equal fifteen per cent (15%) of the accepted bid.

In case any bidder shall fail to make good his bid upon its acceptance by the Special Master by making within five days after such acceptance the additional deposit with the Master as hereinbefore provided, or, after the confirmation of said sale, shall fail to pay as hereinafter provided, the balance due upon his said bid in consumption of his purchase then the sums in cash so deposited by such bidder or pur-

chasers as hereinbefore provided, shall be forfeited as a penalty for such failure, and shall be applied towards payment of the expenses of a resale and towards making good any deficiency or loss in case the property shall be sold at a less price upon such resale, and to any other and further purposes which the court may direct.

Any party to this cause or any holder or holders of First Mortgage bonds may bid and purchase at such sale.

If any sale for which a deposit has been made shall not be confirmed by the Court, such deposit shall be returned to the bidder, and the deposit of any unsuccessful bidder shall be returned to him when a bid has been accepted.

23. The purchaser whose bid shall have been accepted by the Special Master at said sale shall make payments in cash of the sum remaining due upon his said bid after the application thereto of the amounts theretofore deposited by him as follows:

Twenty-five (25%) per cent. of said amount so remaining due on said bill shall be paid within thirty days after the confirmat on of the sale; a further twenty-five (25%) per cent. of said amount shall be paid within forty days after such confirmation; a further twenty-five (25%) per cent. of said amount shall be paid within fifty days after such confirmation; and a further twenty-five (25%) per cent. of said amount shall be paid within sixty days after such firmation; *Provided*, however, that the purchaser shall have the right to anticipate any or all of said payments by making the same, or any of them, at an earlier time or earlier times, than herein fixed. The Master may accept a certified check upon, or a certificate of deposit of any National Bank or Trust Company which is satisfactory to him, as a payment or a deposit of cash, instead of money, in any case in which he is by the terms of this decree required to obtain cash.

The proceeds of the accepted bill shall be applied to the payment of the amount owing to the United States, whether due or not, secured by its said Subsidy mortgage and lien, until said Subsidy debt shall be paid in full, and the surplus, if any, shall be distributed by subsequent orders of the court.

After the sale hereunder has been confirmed, the purchaser may pay the unpaid balance of his bid to the Master or to the United States, and the receipt of the Secretary of

the Treasury, or his proper subordinate, for any part of such balance, shall be sufficient evidence of its payment, and after such confirmation the Master may pay to the United States any portion of the purchase price in his hands which is applicable to the payment of the Subsidy lien and may take a like receipt therefor.

24. Upon the confirmation of such sale and conveyance of the premises sold, the purchaser or purchasers, his or their successors and assigns, shall, subject to the possession and rights of said Receivers and subject to the liens and rights of the prior mortgagees and encumbrancers hereinbefore mentioned, hold and enjoy the same and all the rights, privileges, immunities and franchises thereto appertaining. The purchaser or purchasers, and his or their successors and assigns, shall subject to the possession and rights of said Receivers, and subject to the liens and rights of the prior mortgagees and encumbrancers hereinbefore mentioned, thereupon be entitled to have and to hold the said premises so conveyed by a full, absolute and indefeasible title, freed and discharged from all the mortgages, liens, claims and charges of the Complainants herein and of each and every defendant herein. and of all the parties to this cause, saving and excepting the right of the United States Government to have the preference, at all times, in the use at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the said telegraph line and railroad for the transmission of despatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the Government whenever required by any department thereof.

25. The Defendant the Union Pacific Railway Company, shall at the time of the execution of the said deed by said Special Master, as a further assurance to the purchaser or purchasers, execute its deed, or join with said Special Master in the execution of the deed to be made by him, and shall thereby convey and release to the purchaser or purchasers and his or their successors or assigns, all its right, title and interest in and to the property conveyed by said Special Master to the said purchaser or purchasers. And said Railway Company shall also execute and deliver

to said purchaser or purchasers or to his or their assigns, and shall unite in the execution and delivery of such further, separate and specific deeds and conveyances of lands, lots or other property, of which the title shall be held by or for it, described in the Master's report, hereby confirmed, as shall be by said Special Master approved as necessary or proper to complete or assure the title of the purchaser, or to complete or facilitate the record evidence thereof.

26. The purchaser or purchasers, or his or their successors and assigns, shall, as part consideration and purchase price of the property purchased, and in addition to the sums heretofore required to be paid, take the same and receive the deed therefor upon the express condition that he or they, or his or their successors or assigns shall pay, satisfy and discharge:

FIRST: All the proper costs of this cause and of the expenses of the sale hereunder, including the compensation and necessary expenses of the Special Master appointed to make the sale.

SECOND: The charges, compensation, allowances and disbursements of the complainants and any of the other parties to this cause, entitled thereto, their solicitors and counsel.

The costs, compensation, allowances and disbursements specified in this article shall be paid by the purchasers when they are fixed by the Court. The purchaser, his successors or assigns, shall pay any of the claims described in this order when by it required, or shall pay to the Special Master or into Court the moneys required to discharge the same from time to time, as the Court may direct. And this Court reserves the right and retains the power and jurisdiction to take back and resell the said property in case the purchaser, his successors or assigns, fail to pay any of said claims, when by it required, and in case he or they fail to pay any other part of the purchase price of this property.

27. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that upon payment of the purchase price by the purchaser or purchasers of said property the said Special Master making the sale shall execute and deliver a good and sufficient deed conveying all the said railroad, telegraph, rolling stock and property of every kind and de-

scription herein ordered to be sold subject to the prior liens and exceptions hereinbefore found, together with all the franchises, rights, functions, immunities and appurtenances belonging to the said premises, to such purchaser or purchasers, or his or their successors and assigns.

From the time when by the order of this Court the said Receivers deliver the possession of the said premises and property to such purchaser, his or their successors and assigns, he or they shall have, receive hold and enjoy all the earnings, income and proceeds of the operation, use or disposition thereof, and all compensation for the transmission of despatches over said telegraph line and the transportation of any persons or property over said railroad for any persons, party or corporation including the Government of the United States.

28. The bonds held in the United States Union Pacific Sinking Fund shall be sold as an entirety and in one parcel to the highest bidder or bidders.

The Special Master shall have the power and right to postpone the sale of said Sinking Fund Bonds from time time, and may, without further notice, proceed with the sale on any day to which the same may have been adjourned, and may at his option give such further notice of sale in addition to the public notice above described as he may think proper.

The Special Master shall receive no bid from any bidder for the securities in said Sinking Fund, who shall not have paid to said Special Master. at his office in the City of Omaha, Nebraska, at least five days before the date announced for said sale the sum of at least ten per cent. of the aggregate par value of all the bonds in the said Sinking Fund as herein found, namely the sum of $1,364,525, as a pledge that he will make good his bid in case of its acceptance.

The said Special Master shall accept no bid for said Sinking Fund Bonds less than a sum equal to the aggregate par value of all of the bonds in said Sinking Fund as herein found as of the date of April 30th, 1897. namely, the sum of $13,645,250.89, and, unless such sum shall be bid, the Special Master may adjourn the sale and apply to the Court for further instructions.

The purchaser shall, within fifteen days after the confirmation of the said sale by the Court of the said Sinking

Fund bonds, make such further payment or payments in cash as shall be necessary to complete, with the deposit theretofore made by him, the payment of the sum bid by him at such sale, and such payment shall be made into the Treasury of the United States, or to such official of the Treasury Department of the United States or depositary as shall be by the Secretary of the Treasury designated to receive such payment on behalf of the United States; provided, however, that simultaneously with such payment and as a condition thereof, the said purchaser shall be entitled to receive and shall receive from the Secretary of the Treasury of the United States and said Secretary of the Treasury shall at the time of such payment as aforesaid deliver to such purchaser all the bonds in the said United States Union Pacific Sinking Fund, duly endorsed by the Secretary of the Treasury so as to effectually transfer the same and make the same good in the hands of other holders than the said Secretary. And thereupon the cash held in the said United States Union Pacific Sinking Fund shall be applied and credited in payment of the Subsidy debt of the said Union Pacific Railway Company to the United States, secured by said Subsidy lien, whether such indebtedness shall be then matured or not, and the said Secretary of the Treasury shall be entitled to so credit, and shall so credit the same

The Special Master shall hold any sum deposited with him as a pledge to secure any bid which shall have been accepted, subject to the order of the Secretary of the Treasury of the United States at any time when the balance of such bid shall have been paid and the delivery of the said bonds to the purchaser shall have been made as hereinbefore provided, or subject to the requirement of the purchaser made at any time within fifteen days after the confirmation of the said sale that the amount so deposited shall be paid over by the said Special Master into the Treasury of the United States, or to such official of the Treasury Department or depositary as may be designated by the said Secretary of the Treasury to receive such payment.

The Master may accept a certified check upon or a certificate of deposit of any National Bank or trust company which is satisfactory to him, as a payment or a deposit of cash instead of money, in any case in which he is by the terms of this decree required to obtain cash.

If any surplus over the said Subsidy debt of The Union Pacific Railway Company to the United States shall result from the proceeds of the sale of the railroad and other property embraced in said Subsidy mortgage and lien and from the sale of the bonds held in the United States Union Pacific Sinking Fund, after the application of the cash in said Sinking Fund to said Subsidy indebtedness, then such surplus shall be paid into Court, and any party hereto may apply to the Court for further direction in respect thereto.

In case any bidder or purchaser shall fail, within fifteen days after confirmation of the said sale of said Sinking Fund bonds to pay, as hereinbefore provided, the balance due upon his bid in consummation of his purchase, then the sum deposited by such purchaser shall be forfeited as a penalty for such failure and shall be applied towards the payment of the expenses of a resale, and towards the making good any deficiency or loss in case the same shall produce a less price upon such resale, and to any other and further purpose which the Court may direct.

If any sale for which a deposit has been made shall not be confirmed by the Court, such deposit shall be returned to the bidder, and the deposit of any unsuccessful bidder shall be returned to him when a bid has been accepted.

29. It Is Further Ordered, Adjudged and Decreed, That William D. Cornish be, and he is hereby appointed Special Master to execute this Decree and make the sales herein provided to be made, and to execute and deliver the deeds of conveyance of the property sold to the purchaser or purchasers thereof upon confirmation of said sales and payment of the purchase prices thereof, as herein provided, and this Court reserves the right at any time to appoint another Master with the same powers as the one herein appointed, in case of the inability for any reason of the Special Master herein appointed to act or perform the duties of his office or in reference to his office. As soon as any sales have been made by such Special Master in pursuance of this Decree, he shall report the same to this Court for confirmation and shall from time to time thereafter make such further and supplemental reports as shall be necessary to keep the Court and the parties to this cause properly advised of his proceedings in the execution of this Decree.

30. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That all the rights of the complainants, the United States, not disposed of by this Decree are hereby reserved to them, and that all questions not hereby disposed of, including the discharge of the Receivers and the statement and settlement of their accounts, are hereby reserved by this Court for its future adjudication; and that any party to this cause may at any time apply to this Court at the foot of this Decree for further relief in respect to matters not herein specifically provided for.

WALTER H. SANBORN,
U. S. Circuit Judge, Eighth Judicial District.

Endorsed on the back as follows:

No. 177 Docket "S."

UNITED STATES OF AMERICA
vs.
UNION PACIFIC RAILWAY CO., et al.,
Defendants.

UNITED STATES CIRCUIT COURT,
District of Nebraska.

DECREE.

Filed July 29, 1897,

Oscar B. Hillis, Clerk.

## Master's First Report.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE EIGHTH CIRCUIT AND DISTRICT OF NEBRASKA.

E UNITED STATES OF AMERICA, Complainants
vs.
E UNION PACIFIC RAILWAY COMPANY et al., Defendants.

RST REPORT OF SPECIAL MASTER UNDER DECREE OF SALE.

the Honorable the Circuit Court:

I, William D. Cornish, Special Master, appointed in and a certain decree of foreclosure and sale entered herein on ly 29th, 1897 do hereby respectfully report:

That by said decree of foreclosure and sale it was adjudged and decreed that the Union Pacific Railway Company pay or cause to be paid, within twenty days after the ntry of said decree, certain amounts therein found to be ue and owing for principal and interest under the subsidy ortgage thereby foreclosed, and that in default of such ayment by the Union Pacific Railway Company, or by me one claiming under it, or for its account, or by some of he defendants in the above entitled cause, all the railroad, olling stock, telegraph and franchises, rights, functions, mmunities and appurtenances to the same belonging, and ll the estate and property of every kind and description mbraced in and covered by said subsidy mortgage and lien o the United States, and all securities in the United States, Union Pacific Sinking Fund in said decree described should e sold as therein provided.

That neither the said The Union Pacific Railway Company, nor any one claiming under it, nor any of the defendants in said cause, paid or caused payment of the said sum or any part thereof to be made within twenty days after the entry of said decree or at any other time.

That under and in accordance with the provisions of said decree, I fixed the day when the sale of the property covered by and embraced in said subsidy mortgage and directed by said decree to be sold, should take place, and caused public notice to be given by advertisement of such sale at public auction to the highest bidder or bidders upon the mortgaged premises at the freight station of the Union Pacific Railway Company in the City of Omaha, in the State of Nebraska, on Monday, the first day of November, 1897, at 11 o'clock in the forenoon which said notice also described briefly the property to be sold, and the conditions upon which the said sale should take place, a copy of which notice of sale is hereto attached marked Exhibit A, and is made a part hereof.

That said notice was published at least once a week for the term of four weeks preceding the day of sale in at least one newspaper designated by me in each of the following cities, namely: New York City, New York; Boston, Massachusetts; Omaha, Nebraska; Denver, Colorado; Cheyenne, Wyoming; Ogden and Salt Lake City, Utah; as is shown by the affidavits of publication hereto annexed and marked Exhibits B C D, E, F, G H and I, and made a part hereof.

That upon October 25th, 1897, that day being at least five days before the date of sale mentioned in said published notice, there was deposited with me at my office in Omaha, Nebraska, by Louis Fitzgerald, Chairman, the sum of Two Million Dollars ($2,000,000), as a pledge that in the event of Louis Fitzgerald, Alvin W. Krech, Lawrence Greer and Charles B. Smith, or such one or more of them as shall be present and bidding, offering to bid for said railroad franchises and property at said sale, he or they would make good his or their bid in case of its acceptance, in the manner provided in said decree; and that said deposit of $2,000,000 was made by the delivery to me of a certified check for that amount upon the United States Trust Company of New York, to my order, said Trust Company and said check being satisfactory to me.

That on October 25th, 1897, that being at least five days before the date of sale mentioned in said published notice, there was deposited with me at my office in Omaha, Nebraska, by Louis Fitzgerald, Chairman, the sum of one million, three hundred and sixty-four thousand, five hundred

nd twenty-five dollars ($1,364,525), as a pledge that in the vent of Louis Fitzgerald, Alvin W. Krech, Lawrence Greer nd Charles B. Smith, or such one or more of them as should e present and bidding, offering to bid for the securities in the inking fund at the said sale thereof directed by said decree e or they wou'd make good his or their bid in case of its ac-eptance in the manner provided by said decree; and that he said deposit of $1,364,525 was made by the delivery to me f a certified check for that amount upon the United States Trust Company, of New York, to my order, said Trust Com-any and said check being satisfactory to me.

That at the above mentioned time and place and in pur-uance of said decree I offered the railroad, franchises and roperty therein described and directed to be sold for sale s an entirety and in one parcel and sold the same to Louis Fitzgerald, and Alvin W. Krech, as purchasing trustees, or the sum of $39,883,281.87, that being the highest bid for aid railroad, franchises and property at said sale, and the aid Louis Fitzgerald and Alvin W. Krech being the highest idders therefor.

That upon the acceptance of said bid for said railroad, franchises and property said successful bidders above named deposited with me on account thereof a further sum of $4-100,000 in cash, represented by a certified check satisfactory to me, which, together with the amount previously deposited with me by said purchaser as a pledge as above stated, equalled at least fifteen per cent. of the accepted bid at said sale, as provided in said decree.

That at the above mentioned place and immediately after the above mentioned sale of the said railroad, franchises and property, and in pursuance of said decree, I offered the bonds held in the United States Union Pacific Sinking Fund described in said decree, and therein directed to be sold, for sale as an entirety, and in one parcel and sold the same to Louis Fitzgerald and Alvin W. Krech as purchasing trustee for the sum of $13,645,250. 89, that being the highest bid for said bonds and the said Louis Fitzgerald and Alvin W. Krech being the highest bidders therefor.

WM. D. CORNISH,
Special Master.

Omaha, November 1, 1897.

## Petition for Confirmation.

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF NEBRASKA.

(*Title of cause omitted.*)

Now come Louis Fitzgerald and Alvin W. Krech, as purchasing trustees, by Winslow S. Pierce, their Solicitor, and show unto the Court as follows:

FIRST: That the Special Master appointed in and by the decree of foreclosure and sale entered herein, on the 29th day of July, 1897, after having given due notice as prescribed in said decree, sold the railroad property and franchises therein ordered to be sold as an entirety and in one parcel at public auction on Monday, November 1st, 1897, at eleven o'clock in the forenoon, upon the mortgaged premises at the freight station of The Union Pacific Railway Company in the City of Omaha, Nebraska, to these petitioners as purchasing trustees, for the sum of $39,883,281.87, that being the highest bid made for said property at said sale and these petitioners, as purchasing trustees, being the highest bidders therefor, as is shown by the said Special Master's report of sale on file herein.

SECOND: That immediately following the sale of said railroad, property and franchises, the said Special Master, at the same place, offered for sale as an entirety, and in one parcel the bonds in the United States Union Pacific Sinking Fund described in said decree, and sold the same to these petitioners as purchasing trustees, for the sum of $13,645,250.89, that being the highest bid made for said bonds at said sale and these petitioners as purchasing trustees being the highest bidders therefor, as is shown by the said Special Master's report of sale on file herein.

THIRD: That subsequently and on the 2d day of November, 1897, said Special Master filed herein his report of said sales, and these petitioners pray leave to refer to said report with the same force and effect as if it were herein set forth at length.

FOURTH: These petitioners further show that they have agreed with the Secretary of the Treasury of the United States that, in order to meet assurances given to the government in respect of the bids to be made by these petitioners at said sale, the bid made by them of $39,883,-281.87 may, for the purposes of confirmation herein sought and for the purpose of fixing the amount in the aggregate of the payments made and to be made to and for account of the United States under said purchase, be deemed to be the sum of $40,253,605.49, the latter sum being the amount considered and fixed by the said Secretary of the Treasury as required to meet the assurances aforesaid, it being agreed and understood between these petitioners and the said Secretary of the Treasury, however, that the amount of the government earnings for services rendered to the government, earned and received or retained by the United States up to November 1st, 1897, and not yet credited by the United States upon such date, or stated in its accounts, shall be applied and credited on account of the above mentioned sum to be paid by these petitioners, their successors or assigns in partial satisfaction and payment thereof.

FIFTH: These petitioners further show that it is provided in said decree, among other things, that upon payment of the purchase price by the purchaser or purchasers of said railroad, property and franchises the Special Master appointed by said decree should execute and deliver a good and sufficient deed or deeds conveying all of said railroad, telegraph rolling stock and property of every kind and description, to such purchaser or purchasers, or his or their successors or assigns.

Wherefore, these purchasers pray that said Special Master's report of sale be, in all things, ratified, approved and confirmed, and that said sales therein reported be made absolute, subject, however, to all the terms and conditions of said decree and to the performance by these petitioners, or their successors or assigns, of all the obligations set forth in said decree and that, upon payment of the purchase price for said railroad, property and franchises by said petitioners, or their successors or assigns, said Special Master be authorized and directed to execute and deliver a good and sufficient deed or deeds conveying all the said railroad, telegraph, rolling stock and property

of every kind and description, in said decree ordered to be sold and sold at said sale, subject to the prior liens and exceptions in said decree found, together with all the franchises, rights, functions, immunities and appurtenances belonging to the said premises, to these petitioners, or their successors or assigns.

LOUIS FITZGERALD, and
ALVIN W. KRECH,
as purchasing trustees,
By WINSLOW S. PIERCE,
Their Solicitor.

## Order Confirming Master's First Report.

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE UNION PACIFIC RAILWAY COMPANY, et al Defendants.

ORDER CONFIRMING SPECIAL MASTER'S FIRST REPORT OF SALE.

Upon motion of Louis Fitzgerald and Alvin W. Krech as purchasing trustees, appearing by Winslow S. Pierce, their solicitor, and the defendants Morgan and Atkins consenting by stipulation filed herein, and the complainants and each and every other defendant by their counsel, respectively, consenting in open court, and the court being duly advised in the premises, it is

ORDERED, that the Special Master's report of sale filed herein on November 2nd, 1897, be and it is in all things ratified, approved and confirmed and the said sales therein reported are hereby made absolute, subject however, to all the terms and conditions of the said decree and to the due performance by the purchaser or their successors or assigns, of all the obligations therein prescribed.

IT IS FURTHER ORDERED, that the amount in the aggregate of the payments made and to be made to and for account of the United States by the petitioners, their successors or assigns, for the railroad property and franchises (exclusive of the sinking fund securities) purchased by the petitioners, shall be the sum of $40,253,605.49, provided, however, that the amount of government earnings, for services rendered to the government, earned and received or retained by the United States up to November 1st, 1897, applicable to the subsidy debt of the Union Pacific Railroad Company and not yet credited by the United States upon such debt, or stated in its accounts, shall be applied and credited on account of the above mentioned sum to be paid by the purchasers, their successors or assigns, and in partial satisfaction and payment thereof.

WALTER H. SANBORN,
Circuit Judge.

Dated, November 6th, 1897.

We consent to the entry of the foregoing order.

Dated November 8th, 1897.

THE UNITED STATES OF AMERICA,
By JOHN C. COWIN,
Special Counsel.

LOUIS FITZGERALD AND ALVIN W. KRECH,
Purchasing Trustees.
By WINSLOW S. PIERCE,
Their Solicitor.

## Master's Second Report.

IN CIRCUIT COURT OF UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH AND THE SOUTHERN DISTRICT OF IOWA.

UNITED STATES OF AMERICA, Complainant.
vs.
UNION PACIFIC RAILWAY CO., et al., Defendants.

SECOND REPORT OF WM. D. CORNISH, SPECIAL MASTER, UPON SALE UNDER THE DECREE OF FORECLOSURE ENTERED HEREIN.

To the Honorable the Circuit Court of the United States in the Cause and in the Several Districts Above Entitled:

I hereby respectfully report that Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have paid into the Treasury of the United States the full sum of $13,645,250.89 the amount bid by them for the bonds held by the United States in the Union Pacific Sinking Fund in the aggregate amount of $13,645,250, which bonds are described in the decrees herein, and which bonds were sold to them on the first day of November, 1897, under said decrees as heretofore reported by me herein, and that said bonds have been delivered by the United States of America to said purchasers in accordance and in compliance with the requirements of said decrees; and that the Hon. Lyman J. Gage, Secretary of the Treasury of the United States, has certified to me under date of November 22, 1897, that such payment has been made, and that said bonds have been so delivered, a copy of which certificate is hereto attached and marked "Exhibit A."

I further report that upon the delivery to me of said certificate of payment so made by the Secretary of the Treasury of the United States, Louis Fitzgerald, Chairman, the person who made the deposit with me five days prior to said sale of the amount specified in that behalf in said

decrees, being the sum of $1,364,525, to qualify himself, Alvin W. Krech, Charles B. Smith and Lawrence Greer, or such one or more of them as might be present and bidding, as bidders at the sale under said decree, of said bonds in the United States Union Pacific Sinking Fund, which deposit was made by certified check, drawn upon the United States Trust Company, of New York, requested me to return said deposit to him; and it appearing that the purchasers at said sale of the securities in said Sinking Fund had made the payment and performed all the other obligations in respect to the purchase of said securities, I returned said check so deposited with me in the amount of $1,364,525 as above stated, to said Louis Fitzgerald, Chairman, and received his receipt therefor, all on November 23, 1897. That a copy of said request and of the receipt for the return of said certified check made by said Louis Fitzgerald, Chairman, are hereto attached and marked "Exhibit B."

Respectfully submitted,

WM. D. CORNISH,
Special Master.

Dated November 24, 1897.

## EXHIBIT A.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, IOWA, COLORADO, WYOMING AND UTAH.

THE UNITED STATES OF AMERICA,
Complainants.

vs.

THE UNION PACIFIC RAILWAY COMPANY, S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, JOHN W. DOANE AND FREDERIC R. COUDERT, RECEIVERS; F. GORDON DEXTER AND OLIVER AMES, AS TRUSTEES; UNION TRUST COMPANY OF NEW YORK, AS TRUSTEE; J. PIERPONT MORGAN & EDWIN F. ATKINS, AS TRUSTEES, AND THE CENTRAL TRUST COMPANY OF NEW YORK, AS TRUSTEE,
Defendants.

To William D. Cornish, Special Master in the above entitled cause:

I hereby certify that Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have paid into the Treasury of the United States, the full sum of $13,645,250.89, the amount for which the bonds held by the United States in the Union Pacific Sinking Fund in the aggregate amount of $13,645,250 were sold to them on the first day of November, 1897, under the final decrees heretofore entered in this cause, and the said bonds have been delivered to the said purchasers in compliance with the requirements of said decrees.

This certificate is made to you to enable you to make your reports thereon to the court in this cause.

L. J. GAGE,
Secretary of the Treasury.

Dated November 22nd, 1897.

## EXHIBIT B.

REORGANIZATION COMMITTEE
OF THE
UNION PACIFIC RAILWAY COMPANY,
120 BROADWAY.

NEW YORK, Nov. 23d, 1897.

HON. W. D. CORNISH,
Special Master.

DEAR SIR:—

I have heretofore deposited with you as Special Master, a certified check drawn by me upon the United States Trust Company of New York, and certified by said Trust Company, in the sum of $1,364,525 as a deposit to qualify myself, Alvin W. Krech, Lawrence Greer and Charles B. Smith as bidders, at a sale of securities in the Union Pacific United States Sinking Fund which took place on the 1st day of November, 1897, under a decree of foreclosure in the case of the United States of America against the Union Pacific Railway Company, et al.

At the said sale a bid was made by myself and Alvin W. Krech as purchasing Trustees, amounting to the sum of $13,645,250.89, being the full amount of the upset price required by said decree.

I now beg to advise you that on November 22d, the said Purchasing Trustees paid to the National City Bank of New York, under direction of the Secretary of the Treasury, the said sum of $13,645,250.89, for the account of the United States Treasurer, the receipt of the Secretary of the Treasury for which is hereto attached.

Said payment having been made by the Purchasing Trustees I hereby withdraw said deposit of $1,364,525, and request you to surrender to me the certified check above described concerning said deposit.

Yours truly,
LOUIS FITZGERALD,
Chairman.

RECEIVED from W. D. Cornish, Special Master, the certified check described in the foregoing letter, which check is surrendered to me in accordance with my request as set forth in said letter.
Dated New York, Nov. 23d, 1897.

LOUIS FITZGERALD,
Chairman.

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NATIONAL CITY BANK OF NEW YORK.

No. 1. NEW YORK, N. Y., Nov. 22, 1897.

I certify that LOUIS FITZGERALD and ALVIN W. KRECH, Purchasing Trustees, have this day deposited to the credit of the TREASURER OF THE UNITED STATES, thirteen million, six hundred and forty-five thousand, two hundred and fifty and 89-100 dollars, on account of proceeds of sale of the Union Pacific Railroad Sinking Fund Bonds, for which I have signed triplicate receipts.

G. S. WHITSON,
Cashier.

$13,645,250.89

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It is hereby consented that orders be entered in the above entitled cause for the districts named confirming the foregoing report of the Special Master, dated November 24th, 1897.

GEO. HOADLY,
Special Assistant to the Attorney General in the matter of the Union Pacific Railway

LOUIS FITZGERALD, ALVIN W. KRECH,
Purchasing Trustees.

JOHN F. DILLON,
General Counsel for the Union Pacific Railway Company.

WINSLOW S. PIERCE, R. S. HALL,
Solicitors or F. Gordon Dexter and Oliver Ames, Trustees.

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Endorsed on the back as follows:
157 "S".

CIRCUIT COURT OF THE UNITED STATES
FOR THE
DISTRICT OF NEBRASKA.

UNITED STATES, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY, et al., Defendants.

Second Report of Wm. D. Cornish, Special Master in re sale under foreclosure herein (as to payment of the amount bid for bonds in Sinking Fund)

Filed Dec. 15, 1897,
OSCAR B. HILLIS, CLERK.

## Consent to Order Confirming Sale.

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CIRCUIT COURT OF THE UNITED STATES DISTRICT OF NEBRASKA.

THE UNITED STATES OF AMERICA,
Complainants,
against
THE UNION PACIFIC RY. CO.,
F. GORDON DEXTER, et al.,
Defendants.

The undersigned parties to the above mentioned cause hereby accept service of the report of the Special Master appointed by the decree of foreclosure heretofore entered in said cause in which said report said Special Master reports the full payment of the purchase price as required by said decree and the order confirming the sale thereunder and the execution and delivery by h m of the deed provided for by said decree, and the undersigned hereby consent that the said

report may be confirmed by the above mentioned Court without further notice.

THE UNITED STATES OF AMERICA,
By GEO. HOADLY,
Counsel.

THE UNION PACIFIC RAILWAY COMPANY,
By W. R. KELLY,
Its Solicitor.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT AND JOHN W. DOANE, Receivers,
By W. R. KELLY,
Their Solicitor.

F. GORDON DEXTER AND OLIVER AMES,
Trustees,
By WINSLOW S. PIERCE, R. S. HALL,
Their Solicitors.

UNION TRUST COMPANY OF NEW YORK,
Trustee,
By WHEELER H. PECKHAM,
Counsel.

J. PIERPONT MORGAN AND EDWIN F. ATKINS,
Trustees,
By SEWARD, GUTHRIE, MORAWETZ & STEELE,
Their Solicitors.

THE CENTRAL TRUST COMPANY OF NEW YORK,
Trustee,
By BUTLER, NOTMAN, JOLINE & MYNDERSE,
Its Solicitors.

## Order Confirming Second Report.

THE CIRCUIT COURT OF UNITED STATES FOR DISTRICT OF NEBRASKA.

ITED STATES OF AMERICA, Complainant.
vs.
ION PACIFIC RY. Co., et al., Defendants.
} ORDER.

Upon reading the second report of Wm. D. Cornish, ecial Master appointed to make the sale under the decree foreclosure entered herein, which reports relates to the yment to the United States by Louis Fitzgerald and vin W. Krech, Purchasing Trustees of the full sum of 3,645,250.89 bid by said Purchasing Trustees for the nds contained in the Union Pacific Sinking Fund, and the elivery of said bonds by the United States to said Purchas- g Trustees, and which report is dated November 24th 97; and it appearing that the several parties in interest ave consented to the confirmation of said report as ap- ears by stipulation of the said parties attached thereto, is

ORDERED that said report be filed herewith, and that he said report be and the same is in all things hereby ap- roved, and confirmed.

WALTER H. SANBORN,
Circuit Judge.

Dated December 13, 1897.

Order Endorsed on the back as follows:

157 "S."

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

UNITED STATES, Complainants,

vs.

THE UNION PACIFIC RAILWAY COMPANY, et al., Defendants.

Order Confirming Master's 2nd Report in re sale under decree of foreclosure herein.

Filed December 15, 1897,
OSCAR B. HILLIS, Clerk.

## Master's Third Report.

IN CIRCUIT COURT OF UNITED STATES FOR DISTRICT OF NEBRASKA.

UNITED STATES OF AMERICA, Complainant,

vs.

UNION PACIFIC RY. CO., et al., Defendants.

THIRD REPORT OF WM. D. CORNISH, SPECIAL MASTER, UNDER DECREE OF FORECLOSURE ENTERED HEREIN.

TO THE HONORABLE THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT AND IN THE CAUSE ABOVE ENTITLED:

I hereby respectfully report that Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have paid the full amount of $40,253,605.49, in compliance with the order of Court entered herein confirming the sale under the decree of

foreclosure herein, of the railroad, franchises and property described in said decree, made by me to said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, on November 1, 1897, which sale was reported by me herein under date of November 2, 1897, and that such sum has been paid and applied at the times and in the manner as follows:

FIRST: As reported by me in my first report upon said sale there was deposited with me on October 25, 1897, to qualify said Purchasing Trustees, to bid at said sale, a certified check for $2,000,000, and there was also deposited with me by said Purchasing Trustees upon the acceptance of their bid by me, a further certified check in the sum of $4,100,000. Complying with the request of the Secretary of the Treasury as to the manner in which said sums should be paid over to the United States, I deposited said checks, in the aggregate amount of $6,100,000 in the National City Bank of New York, to the credit of the Treasurer of the United States, on November 29, 1897, and thereupon received the receipt of the Secretary of the Treasury thereafter, which receipt is dated December 1, 1897, and a copy thereof is hereto attached, and marked Exhibit A.

SECOND: On December 6, 1897, said Purchasing Trustees paid into the Treasury of the United States the sum of $8,538,401.38 by depositing the same, under the instructions of the Secretary of the Treasury, in the National City Bank of New York, to the credit of the Treasurer of the United States; and thereupon the Secretary of the Treasury made and delivered to me his receipt for such payment, which receipt is dated December 8, 1897, and a copy thereof, is hereto attached, and marked Exhibit B.

THIRD: On December 16, 1897, said Purchasing Trustees paid into the Treasury of the United States the sum of $8,538,401.38 by depositing the same, under the instructions of the Secretary of the Treasury, with C. N. Jordan, Assistant Treasurer of the United States in New York, to the credit of the Treasurer of the United States; and thereupon the Secretary of the Treasury made and delivered to me his receipt for such payment, which receipt is dated December 18, 1897, and a copy thereof is hereto attached, and marked Exhibit C.

FOURTH: On December 27, 1897, said Purchasing Trustees paid into the Treasury of the United States the

sum of $4,000,000 by depositing the same, under the instructions of the Secretary of the Treasury in the National City Bank of New York, to the credit of the Treasurer of the United States, and on December 28, 1897, the said Purchasing Trustees also paid into the Treasury of the United States the further sum of $4,538,401.28, by depositing the same, under the instructions of the Secretary of the Treasury, with C. N. Jordan, Assistant Treasurer of the United States, in New York, to the credit of the Treasurer of the United States; and thereupon the Secretary of the Treasury made and delivered to me his receipt for such payments, which receipt is dated December 31, 1897, and a copy thereof is hereto attached and marked Exhibit D.

FIFTH. On January 6, 1898, said Purchasing Trustees paid into the Treasury of the United States the sum of $8,538,401.35 by depositing the same, under the instructions of the Secretary of the Treasury, with C. N. Jordan, Assistant Treasurer of the United States, in New York, to the credit of the Treasurer of the United States; and thereupon the Secretary of the Treasury made and delivered to me his receipt for such payment, which receipt is dated January 8, 1898, and a copy thereof is hereto attached and marked Exhibit E.

SIXTH: That the sums so paid into the Treasury of the United States amount in the aggregate to the said sum of $40,253,605.49.

SEVENTH: I further report that said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have assigned and transferred their said bid, and all their rights as bidders and purchasers at said sale of said railroad, franchises and property, to the Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah, as appears by a counterpart original of such assignment which has been exhibited to me, and is hereto attached and marked Exhibit F.

EIGHTH: I further report that it appearing that said Purchasing Trustees have complied with all the conditions of said decrees of foreclosure, and the order of court confirming the sale thereunder, and that said Union Pacific Railroad Company as the assignee of said Purchasing Trustees is entitled thereto, I have, under the authority of said decrees of foreclosure, and in compliance with the requirements thereof, made, executed, acknowledged and delivered

to said Union Pacific Railroad Company, my deed, as Special Master, of the railroad, franchises and property sold by me under said decrees of foreclosure as hereinbefore reported by me, which deed is in the form and contains the provisions and bears date as shown in a copy thereof hereto attached, and marked Exhibit G. That I have so executed and delivered twenty-five counterpart originals of said deed for convenience and purposes of the record of the same.

NINTH: That I have performed all the duties imposed upon me as Special Master appointed to make the sale under the decree of foreclosure herein, and that all of the proceeds of said sale have been paid over to and have been accepted by the complainant herein, and that no money derived from said sale remains in my possession.

Respectfully submitted,

WM. D. CORNISH,
Special Master.

Dated January 27th, 1898.

## EXHIBIT "A"

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH AND THE SOUTHERN DISTRICT OF IOWA.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
THE UNION PACIFIC RAILWAY COMPANY, S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, JOHN W. DOANE and FREDERIC R. COUDERT, Receivers; F. GORDON DEXTER and OLIVER AMES, as Trustees; UNION TRUST COMPANY OF NEW YORK, as Trustee; J. PIERPONT MORGAN and EDWIN F. ATKINS, as Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK, as Trustee,
Defendant.

To William D. Cornish, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by you as Special Master in the above entitled cause, to the United States of America of the sum of Six Million One Hundred Thousand Dollars, moneys deposited with you by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, as purchasers under the sale of the property of the Union Pacific Railway Company made on November 1, 1897, upon the subsidy lien of the United States adjudged upon in said decrees, which sum so paid by you is to be applied in part payment upon the purchase price for which said property was struck off at said sale.

This payment has been made by you in the form of two certified checks, one in the sum of Two Million Dollars, and one in the sum of Four Million One Hundred Thousand Dollars, both payable to your order as Special Master, and endorsed by you under my direction. This receipt is made to you to enable you to make your report thereon in this cause.

As instructed by this Department the above sum of Six Million One Hundred Thousand Dollars was deposited in the Treasury by you November 29, 1897, as shown by the Certificate of Deposit No. 2, issued by the National City Bank of New York, a U. S. Depositary, in duplicate, the original of which has been duly received at the Department.

L. J. GAGE,
Secretary of the Treasury.

Dated December 1, 1897.

## EXHIBIT B.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH, AND THE SOUTHERN DISTRICT OF IOWA.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE UNION PACIFIC RY. CO., et al., Defendants.

To William D. Cornish, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees in the above entitled cause, to the United States of America of the sum of Eight Million, Five Hundred and Thirty-eight Thousand Four Hundred and One and 38-100 Dollars, as purchasers under the sale of the property of the Union Pacific Railway Company made November 1, 1897, upon the Subsidy Lien of the United States adjudged upon in the decrees entered herein on account of and in part payment of the purchase price for which said property was struck off to said purchasers at said sale.

As instructed by this Department the above sum of $8,538,401.38 was deposited in the Treasury by said Louis Fitzgerald and Alvin W. Krech on December 6, 1897, as shown by certificate of deposit No. 3, issued by the National City Bank of New York, a United States Depositary, in trip-

licate, the original of which has been duly received at the Department.

This receipt is made to you to enable you to make your report thereon in this cause.

L. J. GAGE,
Secretary of the Treasury.

December 8, 1897.

## EXHIBIT C.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH AND THE SOUTHERN DISTRICT OF IOWA.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
THE UNION PACIFIC RY. CO., et al.,
Defendants.

To William D. Cornish, Special Master in the above entitled cause.

Receipt is hereby acknowledged of the payment by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees in the above entitled cause, to the United States of America of the sum of Eight Million, Five Hundred and Thirty-eight Thousand Four Hundred and One and 38-100 Dollars, as purchasers under the sale of the property of the Union Pacific Railway Company made November 1, 1897, upon the Subsidy Lien of the United States adjudged upon in the decrees entered herein, on account of and in part payment of the purchase price for which said property was struck off to said purchasers at said sale.

As instructed by this Department the above sum of $8,538,401.38 was deposited in the Treasury by said Louis Fitzgerald and Alvin W. Krech on December 16, 1897, as shown by certificate No. 714 issued by C. N. Jordan, Assistant Treasurer, United States, in duplicate, the original of which has been duly received at the Department.

This receipt is made to enable you to make your report thereon in this cause.

L. J. GAGE,
Secretary of the Treasury.

Dated, December 18, 1897.

## EXHIBIT D.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH AND THE SOUTHERN DISTRICT OF IOWA.

UNITED STATES OF AMERICA, Complainant.
vs.
THE UNION PACIFIC RY. CO., et al., Defendants.

To William D. Cornish, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees in the above entitled cause, to the United States of America of the sum of Eight Million, Five Hundred and Thirty-eight thousand Four Hundred and One and 38-100 dollars, as purchasers under the sale of the property of the Union Pacific Railway Company made November 1, 1897, upon the Subsidy Lien of the United States adjudged upon in the decrees entered herein, on account of and in part payment of the purchase price for which said property was struck off to said purchasers at said sale.

As instructed by this department the above sum of $8,538,401.38 was paid into the Treasury of the United States by said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, as follows: $4,000,000 thereof was deposited by said Purchasing Trustees in the National City Bank of New York on December 27, 1897, to the credit of the Treasurer of the United States, Certificate No. 4, and $4,538,401.38 thereof was deposited by said Purchasing Trustees in the Sub-Treasury of the United States at New York on December 28, 1897, as shown by Certificate No. 759, issued by C. N. Jordan, Assistant Treasurer, in duplicate, the original of which has been duly received at the Department.

This receipt is made to enable you to make your report thereon in this cause.

L. J. GAGE,
Secretary of the Treasury.

Dated December 31, 1897.

## EXHIBIT E.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH, AND THE SOUTHERN DISTRICT OF IOWA.

UNITED STATES OF AMERICA, Complainant.
vs.
UNION PACIFIC Ry, . Co., et al., Defendants.

To William D. Cornish, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees in the above entitled cause, to the United States of America of the sum of Eight Million, Five Hundred and Thirty-eight Thousand Four Hundred and One and 35-100 dollars, as purchasers under the sale of the property of the Union Pacific Railway Company, made November 1, 1897, upon the Subsidy Lien of the United States adjudged upon in the decrees entered herein, on account of and in part payment of the purchase price for which said property was struck off to said purchasers at said sale.

As instructed by this department the above sum of $8,538,401.35 was deposited in the Treasury by said Louis Fitzgerald and Alvin W. Krech on January 6th 1898, as shown by Certificate No. 804 issued by C. N. Jordan, Assistant Treasurer of the United States, in duplicate, the original of which has been duly received at the Department.

This receipt is made to enable you to make your report thereon in this cause.

L. J. GAGE,
Secretary of the Treasury.

Dated January 8th, 1898.

Said report is endorsed on the back as follows:

UNITED STATES CIRCUIT COURT
FOR THE
DISTRICT OF NEBRASKA.

UNITED STATES, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY, et al.,
Defendants.

THIRD REPORT OF WM. D. CORNISH,
SPECIAL MASTER UNDER DECREE
OF FORECLOSURE HEREIN

FILED FEB. 1, 1898.

OSCAR B. HILLIS, Clerk.

CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF NEBRASKA.

THE UNITED STATES OF AMERICA, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY, F. GORDON DEXTER, et al., Defendants.

The undersigned parties to the above mentioned cause hereby accept service of the Report of the Special Master appoint d by the decree of foreclosure heretofore entered in said cause in which said Report said Special Master reports the full payment of the purchase price as required by said decree and the order confirming the sale thereunder and the execution and delivery by him of the deed provided for by said decree, and the undersigned hereby consent that the said Report may be confirmed by the above mentioned court without further notice.

THE UNITED STATES OF AMERICA,
By GEO. HOADLY,
Counsel.

THE UNION PACIFIC RAILWAY COMPANY,
By W. R. KELLY,
Solicitor.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT and JOHN W. DOANE, Receivers,
By W. R. KELLY,
Their Solicitor.

F. GORDON DEXTER and OLIVER AMES, Trustees,
By WINSLOW S. PIERCE, R. S. HALL,
Their Solicitors.

UNION TRUST COMPANY OF NEW YORK,
Trustee,
WHEELER H. PECKHAM,
Counsel.

J. PIERPONT MORGAN and EDWIN F. ATKINS,
Trustees,
By SEWARD, GUTHRIE, MORAWETZ & STEELE,
Their Solicitors.

THE CENTRAL TRUST COMPANY OF NEW YORK,
Trustee,
By BUTLER, NOTMAN, JOLINE & MYNDERSE,
Its Solicitors.

## GOVERNMENT—UNION DIVISION.

## ASSIGNMENT OF BID.

**Know all Men by these Presents, That**

WHEREAS, in a certain cause pending in the Circuit Court of the United States for the District of Nebraska, in which the United States of America are complainants, and The Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers; F. Gordon Dexter and Oliver Ames, Trustees; Union Trust Company of New York, Trus-

tee; J. Pierpont Morgan and Edwin F. Atkins, Trustees, and The Central Trust Company of New York, Trustee, are defendants, a certain decree of foreclosure and sale was entered by the said Court on the 29th day of July, 1897; and

WHEREAS, in certain causes ancillary thereto and pending between the same parties in the Circuit Courts of the United States for the Districts of Colorado, Wyoming, Utah and the Southern District of Iowa, certain decrees were entered by said Courts on the following dates respectively—to-wit, in the Circuit Court of the United States for the Southern District of Iowa, on the 29th day of July, 1897; in the Circuit Court of the United States, for the District of Colorado, on the 31st day of July, 1897; in the Circuit Court of the United States, for the District of Wyoming, on the 31st day of July, 1897; and in the Circuit Court of the United States, for the District of Utah, on the 2d day of August, 1897; by each of which said decrees it was, among other things, adjudged and decreed that the decree rendered in said cause by the United States Circuit Court, for the District of Nebraska, be rendered and pronounced as the decree of the said Courts respectively in said ancillary causes and should be executed upon the terms and conditions therein prescribed and that the execution of said decree rendered by said Circuit Court of the United States, for the District of Nebraska, according to its terms and conditions should be deemed and held to be the execution of the decrees of the said Courts in said ancillary causes in all respects whatsoever; and

WHEREAS, by said decrees it was, among other things adjudged and decreed that the said The Union Pacific Railway Company pay, or cause to be paid, within twenty days after the entry of said decrees into the Treasury of the United States of America the amount in said decrees found to be due and owing to said United States of America, and that in default of such payment within said time all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description embraced in and covered by the Subsidy Mortgage and Lien of the United States should be sold, as in said decrees directed, as an entirety and in one parcel by William D. Cornish, the Special Master, appointed by said decrees, at public auction, to the highest bidder or bidders upon the

mortgaged premises, at the freight station of The Union Pacific Railway Company in the City of Omaha, in the State of Nebraska, on a day or days to be fixed by the said Special Master, after giving notice of said sale as in said decrees specified and

WHEREAS, neither the said The Union Pacific Railway Company, nor any one for its account, nor any defendant in any of the said causes above mentioned made payment of the sum decreed as aforesaid or any part thereof within the time aforesaid, or at any other time; and

WHEREAS, the said Special Master in pursuance of said decrees, due notice having been given as therein prescribed and according to law, did duly sell at public auction upon the mortgaged premises at the freight station of The Union Pacific Railway Company in the City of Omaha in the State of Nebraska, on the 1st day of November, 1897, all and singular all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description embraced in and covered by the said Subsidy Mortgage and Lien of the United States (being all the premises, railroad and property of every kind and description mentioned in said decrees except the bonds in the United States-Union Pacific Sinking Fund) to Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, for the sum of $39,883,281.67, said Louis Fitzgerald and Alvin W. Krech being the highest and best bidders for said property at said sale, and having duly and seasonably qualified as bidder at said sale as required by said decrees in that behalf; and

WHEREAS, the said Special Master did duly make and file his report of said sale in the said several courts; which said report and the sale therein reported have been, upon due notice, by orders of said several courts, duly confirmed; and

WHEREAS, the said Louis Fitzgerald and Alvin W. Krech, have in all respects to the date of these presents complied with the provisions of said decrees of foreclosure and sale and have completed the payment of the purchase price as required by said decrees and orders confirming said sale; and

WHEREAS, in said decrees it is among other things provided that upon payment of the purchase price by the purchaser or purchasers of said property the said Special Master

ointed by said decrees shall execute and deliver a good
l sufficient deed conveying all the said railroad, telegraph,
ing stock, and property of every kind and description in
d decrees ordered to be sold, subject to the prior liens and
eptions in said decrees found, together with all the fran-
ses, rights, functions, immunities and appurtenances
longing to the said premises, to the purchasers or their
ccessors and assigns; and

WHEREAS, the Union Pacific Railroad Company, a
rporation organized and existing under the laws of the
ate of Utah, is desirous of acquiring, and is authorized
acquire, the said bid or contract of purchase of said
ouis Fitzgerald and Alvin W. Krech, and all their rights
ereunder, including their right to receive a deed or deeds
ursuant to the said decrees for the property, railroad and
remises purchased by the said Louis Fitzgerald and Alvin
. Krech at the said sale; and the said Railroad Company
as made, and has agreed to make, payment and provision
or the payment for said property satisfactory to said
ouis Fitzgerald and Alvin W. Krech, and has agreed to
erform and assume all of the obligations required by
aid decrees and orders to be performed and assumed by
aid Louis Fitzgerald and Alvin W. Krech by reason of
heir said bid and purchase at said sale;

**Now therefore these presents witness:**

That the undersigned Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, in consideration of the premises, and of other good and valuable considerations, have sold, assigned, transferred and set over and hereby do sell, assign, transfer and set over unto said Union Pacific Railroad Company, its successors and assigns, their said bid and their right to receive conveyance of the said railroad, franchises and property so purchased by them and all their other rights under said decrees or by virtue of their said bid and purchase in and to said premises, being all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging and also the estate and property of every kind and description embraced in and covered by the said Subsidy Mortgage and Lien of the United States (being all the premises, railroad and property of every kind and

description mentioned in said decrees except the bonds in the United States Union Pacific Sinking Fund);

TO HAVE AND TO HOLD the same unto the said Union Pacific Railroad Company, its successors and assigns, to its and their own use forever, subject, however, to all the conditions, restrictions and reservations in said decrees set forth and subject, further, to the performance, in the manner set forth in said decrees, by the said Union Pacific Railroad Company of all the acts and things required by said decrees to be performed by the said purchasers at said sale and now remaining unperformed, and said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, do hereby direct and request that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers at said sale, or his or their successors or assigns, conveying and releasing said property as in said decrees provided, be made and delivered to said Union Pacific Railroad Company, its successors and assigns.

AND THESE PRESENTS FURTHER WITNESS THAT Union Pacific Railroad Company hereby accepts the foregoing assignment, and covenants and agrees to pay, satisfy and discharge, and to indemnify and forever hold harmless said Louis Fitzgerald and Alvin W. Krech, their executors and administrators from and against any, and all losses, damages, expenses and liabilities whatsoever which may have been incurred, or hereafter may be incurred, by said Louis Fitzgerald and Alvin W. Krech or either of them by reason of their said bid and the acceptance thereof, or by reason of any acts and things required by said decrees or said orders confirming said sale to be performed by said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees.

Ten originals of this instrument have been executed, each of which shall be deemed an original and all collectively as one instrument.

IN WITNESS WHEREOF, the undersigned, Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have hereunto set their hands and affixed their seals, and Union Pacific Railroad Company has caused these presents to be executed by its President and its corporate seal to be

hereto affixed, attested by its Secretary, this 17th day of January, 1898.

LOUIS FITZGERALD, [SEAL]
ALVIN W. KRECH, [SEAL]
Purchasing Trustees.

In the presence of:
G. V. TURNER.
WALTER S. WILSON.

UNION PACIFIC RAILROAD COMPANY,
By
HORACE G. BURT,
President.

[SEAL]

Attest: ALEX. MILLAR,
Secretary.

WILLIAM D. CORNISH, SPECIAL MASTER,
AND OTHERS
TO
UNION PACIFIC RAILROAD COMPANY
DEED.

Under Decree Foreclosing Government Subsidy Lien on the Union Pacific Railroad.

Dated January 22, 1898.

State of Wyoming, } ss.
County of Uinta, }

Filed for record in my office this 1st day of February, A. D., 1898, at 11:35 o'clock P. M., and recorded in Book I of Deeds on page 81.

JAMES BROWN,
*County Clerk and ex-officio Register of Deeds.*
By ALEX NESBIT, *Deputy.*

INDENTURE, made the 22d day of January, A. D. 1898, between,

WILLIAM D. CORNISH, of St. Paul, Minnesota, as Special Master appointed by the decrees entered in the causes hereinafter mentioned by the Circuit Courts of the United States for the District of Nebraska, the Southern

District of Iowa, the District of Wyoming, the District of Colorado and the District of Utah, party of the first part;

THE UNION PACIFIC RAILWAY COMPANY, a corporation formed by the consolidation of the Union Pacific Railroad Company, with the Kansas Pacific Railway Company and the Denver Pacific Railway & Telegraph Company, party of the second part;

LOUIS FITZGERALD and ALVIN W. KRECH, Purchasing Trustees, both of the City of New York, parties of the third part; and

UNION PACIFIC RAILROAD COMPANY, being a new corporation or body politic and corporate organized and existing under and pursuant to the laws of the State of Utah, party of the fourth part;

WHEREAS, The Union Pacific Railroad Company was duly incorporated and organized under and by virtue of an Act of the Congress of the United States, entitled "An Act to aid in the construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1, 1862, also an Act of Congress amendatory thereof, approved July, 2, 1864, and other Acts of the Congress of the United States amendatory thereof and supplemental thereto; and

WHEREAS, the said last named company, under and pursuant to the legislation aforesaid, did construct a continuous line of railroad and telegraph extending from Council Bluffs, on the Iowa bank of the Missouri River, across said river and through the States of Nebraska, Wyoming and Colorado, into the State of Utah, to a connection with the railroad of the Central Pacific Railroad Company, at a point about five miles west of the City of Ogden, in the State of Utah, a distance of 1,042.41 miles, more or less, of main line, including the bridge over the Missouri River between Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska; and

WHEREAS, The Union Pacific Railway Company, party hereto of the second part, was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several acts of Congress of the United States, by the consolidation of said The Union Pacific Railroad Company, and the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph

Company, and the said Union Pacific Railway Company, so created, became the successor to each and all of the said constituent Companies, and became vested with all the rights, titles, interest, lands and land grants, railroads, properties and franchises of each and all of the said constituent Companies; and

WHEREAS, the United States of America, under and pursuant to the said Acts of Congress, issued and delivered to said The Union Pacific Railroad Company bonds of the United States, termed subsidy bonds, amounting to the principal sum of $27,236,512, all of the tenor and effect described in the said Acts of Congress, which created and constituted *ipso facto* a mortgage and lien, as in said Acts of Congress provided (which mortgage and lien are hereinafter termed the "Subsidy Lien"), in favor of the United States, to secure the repayment to the United States of the amount of said Subsidy Bonds so issued and delivered to the said Union Pacific Railroad Company, together with all interest thereon which should have been paid by the United States, upon the whole line of railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds were issued, formerly belonging to The Union Pacific Railroad Company, with all the rights, functions, immunities and appurtenances thereunto belonging, and upon all the property, estate, rights and franchises of every kind and description granted or conveyed by the United States to said The Union Pacific Railroad Company, and also as and to the extent by law provided upon all the estate and property, real personal and mixed, assets and income of the said The Union Pacific Railroad Company, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien or claim thereon, including all estate, property and assets derived by the said The Union Pacific Railway Company from the said The Union Pacific Railroad Company, by virtue and force of said consolidation; and

WHEREAS, The Union Pacific Railway Company, having made default in the repayment to the United States of the amount of the Subsidy Bonds issued and delivered to said The Union Pacific Railroad Company, to the extent and in the manner specified in the decrees hereinafter referred to, the United States of America, by its Attorney-General acting under the direction of the President of the United

States, filed in the Circuit Court of the United States for the District of Nebraska their bill in equity against The Union Pacific Railway Company, Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, receivers of The Union Pacific Railway Company F. Gordon Dexter and Oliver Ames, as trustees of the first mortgage of The Union Pacific Railroad Company, Union Trust Company of New York as trustee; J. Pierpont Morgan and Edwin F. Atkins, as trustees, and the Central Trust Company of New York, as trustee, defendants, to foreclose the Subsidy Lien of the United States, and such proceedings were had in said cause that on the 29th day of July, 1897, a certain decree of foreclosure and sale was entered by said court whereby it was adjudged that the United States had a mortgage and lien upon all of the property hereinafter more particularly described as having been sold by the Master and by this indenture conveyed, including the bonds in United States Union Pacific Sinking Fund, as shown in the said decree; and said The Union Pacific Railway Company party hereto of the second part, was adjudged and decreed to pay or cause to be paid within twenty days after the entry of the said decree, into the treasury of the United States of America the sum of $18,487,629.18, and that in default of such payment by The Union Pacific Railway Company, or by some one claiming under it, or by some one for its account, or by some of the defendants in said cause, within the time aforesaid, all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description mentioned in the said decrees and embraced in and covered by the said Subsidy Mortgage and Lien to the United States, and all securities in the said United States Union Pacific Sinking Fund to be sold, and all the right, title, estate, interest and equity of redemption of the said defendant The Union Pacific Railway Company and of all persons claiming or to claim under it, and of all the parties to said cause, except the prior incumbrancers and title and lien holders in said decree described, viz., those claiming under the American Loan and Trust Company Equipment Trust Indenture, and under the Omaha Bridge Mortgages to said John Pierpont Morgan and Edwin F. Atkins, as trustees, and the Central Trust Company of New York as trustee, respectively, and those claiming under

the First Mortgage of November 1, 1865, including the Receivers appointed thereunder, of, in or to the said railroad, telegraph, franchises, rolling stock and property, and every part and parcel thereof, embraced in said Subsidy Lien and Mortgage, and all the right, estate, interest and equity of redemption of all and each of the parties to said cause of, in or to the securities in the said Sinking Fund and in and to every part and parcel thereof, be forever absolutely barred and foreclosed, saving only the rights in said decree expressly excepted and reserved; and

WHEREAS, similar and auxiliary bills of the same character and effect were filed by the United States of America in the Circuit Courts of the United States for the Southern District of Iowa, the District of Wyoming, the District of Colorado and the District of Utah, in each of which Districts portions of the premises, property and franchises embraced in said Subsidy Lien were situate,and said decree entered by the Circuit Court of the United States for the District of Nebraska on the 29th day of July, 1897, was adopted, rendered and announced as the decree of each of said other courts in said similar and auxiliary causes therein pending, by decrees entered by such courts respectively on the following dates, viz.: by said Circuit Court of the United States for the Southern District of Iowa, on the 29th day of July, 1897, by the Circuit Court of the United States for the District of Wyoming, and said Circuit Court of the United States for the District of Colorado, on the 31st day of July, 1897, and by said Circuit Court of the United States for the District of Utah, on the 2d day of August, 1897, to which said several suits and to the proceedings and record thereof in each of the said Courts including said Circuit Court of the United States for the District of Nebraska, reference is hereby made; and

WHEREAS, neither The Union Pacific Railway Company, nor any one claiming under it, nor any one for its account, nor any defendant in any of the said causes above mentioned, made payment of the sum decreed as aforesaid or any part thereof, within the time aforesaid or at any time; and

WHEREAS, William D. Cornish, the party of the first part hereto, was, in and by the said decree of the Circuit Court of the United States for the District of Nebraska, and in and by said ancillary decrees of the United States Circuit

Court in and for each of said the other Districts, appointed Special Master to execute said decrees and make the sales therein provided to be made, and to execute and deliver the deeds of conveyance to the purchaser or purchasers thereof upon confirmation of such sales and payment of the purchase price thereof as in said decrees provided; and

WHEREAS, the party of the first part gave due notice of the time and place of the sales pursuant to the said decrees and according to law, and complied in all respects with the provisions of said decrees relating to the sale thereby decreed and directed; and, in pursuance of the said decrees, at the place therein specified, to-wit, at the freight station of The Union Pacific Railway Company, in the City of Omaha, in the State of Nebraska, did duly sell at public auction on the 1st day of November, 1897, to Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, the highest and best bidders at said sale, all and singular the premises, railroads and property of every kind and description mentioned in the said decrees, and embraced in and covered by the subsidy Lien of the United States as determined and defined in said decrees, not including the bonds in the United States Union Pacific Sinking Fund, at and for the sum of thirty-nine million eight hundred and eighty-three thousand two hundred and eighty-one 67-100 dollars ($39,883,281.67) and, at the same place and on the same day, sold to the same persons, they being the highest and best bidders therefor, all the bonds in the said sinking fund, at and for the sum of thirteen million six hundred and forty-five thousand two hundred and fifty 89-100 dollars ($13,645,250.89); and

WHEREAS, afterwards, William D. Cornish, Special Master as aforesaid, did duly make and file his report of said sales, to the said several courts, and, by decrees entered by said several Circuit Courts of the United States in said causes therein pending respectively, the said report of said sales was in all things ratified, approved and confirmed and the sales therein reported made absolute, subject to all the terms and conditions of said several decrees of foreclosure and sale and to the due performance by the purchasers or their successors or assigns of all the obligations therein prescribed; and

WHEREAS, said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, the party of the third part hereto, have in all respects complied with the provisions of the said

decrees of foreclosure and sale and have paid and made settlement of the purchase price as provided in said decrees and the orders of said Courts; and

WHEREAS, in pursuance of the said decrees, all the bonds in said United States Union Pacific Sinking Fund, have been transferred and delivered to said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, and the cash in said United States Union Pacific Sinking Fund has been applied and credited in payment of the subsidy debt of said The Union Pacific Railway Company to the United States secured by said Subsidy Lien; and

WHEREAS, the said purchasers have duly sold, assigned, transferred and set over to the Union Pacific Railway Company, the party of the fourth part to this Indenture, their said bid and their right to receive a deed pursuant to the the said decrees and sale for the property, railroad and premises purchased by them at the sale by the Master aforesaid, except the said bonds in the said United States Union Pacific Sinking Fund:

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said William D. Cornish, Special Master as aforesaid, party of the first part to these presents, in order to carry into effect the said sale made by him as aforesaid, and in pursuance of the aforesaid decrees, and in conformity to law, and in consideration of the premises, and in consideration of the payments aforesaid, hath granted, bargained, sold, assigned, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, release, convey and confirm, unto Union Pacific Railroad Company, the party of the fourth part hereto, and to its successors and assigns, in fee simple, forever, all and singular all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description (except only the said securities in the United States Union Pacific Sinking Fund) embraced in and covered by the Subsidy Mortgage and Lien of the United States, as described in and defined by said decrees, being the whole line of railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which Subsidy Bonds of the United States were issued, formerly belonging to The Union Pacific Railroad Company, with all the rights, functions, immunities and appurtenances

thereunto belonging, and also as and to the extent by law provided all the property, estate, right and franchises of every kind and description granted or conveyed by the United States to the said The Union Pacific Railroad Company, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien or claim thereon, including all estate, property and assets, real, personal and mixed, derived by The Union Pacific Railway Company from the said The Union Pacific Railroad Company by virtue and force of the consolidation of The Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, and including also all the property embraced in the First Mortgage of The Union Pacific Railroad Company, dated November 1st, 1865, as in said decrees found to be and described as follows, viz:

All the railroad, telegraph, premises, rights, franchises, lands and property described in said mortgage, including the railroad, right of way, and railroad property of The Union Pacific Railway Company, extending from the eastern terminus of the Union Pacific Railway on the east line of the said Railway Company's property between Twelfth Avenue and Thirteenth Avenue, in Council Bluffs, Iowa, in a westerly direction to Twentieth Street, in Omaha, Nebraska, including the railroad and railroad bridge across the Missouri River, and also extending from the initial point of construction of the Union Pacific Railroad near the northeast corner of and within section 10, Township 15, range 13, east of the 6th principal meridian in Omaha, Nebraska, thence in a southerly and westerly direction through the City of Omaha, to Twentieth Street in said City of Omaha at a junction with that part of said railroad from Council Bluffs aforesaid, and extending thence in a westerly direction through the counties of Douglas, Sarpy, Dodge, Colfax, Platte, Merrick, Hall, Buffalo, Dawson, Lincoln, Keith, Deuel, Cheyenne and Kimball, in the State of Nebraska, and Sedgwick County, in the State of Colorado, and the Counties of Laramie, Albany, Carbon, Sweetwater, and Uintah, in the State of Wyoming, and the Counties of Summit, Morgan, Davis and Weber, in the State of Utah, to a junction with the Central Pacific Railroad at a point five miles west of Ogden, in the State of Utah, a distance of 1,042.41 miles of main line railroad;

and also the rights of way, railroads, and railroad tracks constituting spurs or branch lines of railroad extending from points of junction with the said main lines (1) at a point about .6 of a mile west of what is known as Transfer Depot at Council Bluffs, in a northeasterly direction to what is known as the Broadway Depot in said city, a distance of 1.72 miles in the City of Council Bluffs; (2) at Almy Junction, Wyoming, in a northerly direction to a terminus at Mine No. Seven, a distance of 3.88 miles; (3) at Cheyenne, Wyoming, in a northwesterly direction to a connection with the track of the Union Pacific, Denver and Gulf Railway, a distance of 2.04 miles; (4) at a point on said main line in Omaha, Nebraska, northerly and easterly, a distance of 18,000 feet to certain ice houses and industries on what is known as Cut-off Lake; also lots, yards, terminal grounds, shop grounds, streets and alleys, lands and tracts of land, tenements and hereditaments, easements and rights of way owned or acquired or appropriated by or for The Union Pacific Railroad Company, The Union Pacific Railway Company, or the Receivers of the property of said last named company, for the purposes of said lines of railroad, including all lands so acquired or appropriated the title to which stands in the names of trustees for said The Union Pacific Railway Company; and also all lands acquired for or used for stations or for terminal purposes, and also all rights and estates, legal and equitable, of The Union Pacific Railway Company in and to all stations, depots, and in and to all union depots upon or connected with the line of its railway or used in connection therewith, and including all the lands and other property designated in the reports of the Special Master, filed in said several causes respectively and referred to in said decrees, and in the Schedules in said reports contained and therein numbered 1, 2, 3, 4, and 5, hereby referred to and made part hereof, all the said property being property owned, acquired or appropriated and necessary to the use and operation of the said railroad; also the shops, freight depots, general office building, round houses, depots, engine houses, car houses, station houses, machine shops, work shops, rails, switches, turnouts, spurs, side tracks, sidings and other structures and facilities upon said mortgaged premises, constructed, acquired or owned for the purposes of or in connection with said lines of railway;

also the lands, interests and easements in lands, pipes, pump houses, structures, pipe lines, appliances, facilities, and easements of said company pertaining to the water supply upon or along said lines of railroad, and the tools, appliances, fixtures, materials and supplies owned or acquired for the purposes thereof; also the locomotives, passenger cars, Pullman sleeping cars, dining cars, freight cars and other cars, and all other equipment and rolling stock owned by The Union Pacific Railway Company, and all interest of said The Union Pacific Railway Company, in any other equipment or rolling stock, to the extent that said equipment and rolling stock so owned, or in which the said railway company has any interest, was acquired or provided for or by said railway company, for the purposes of said railroad and premises or is necessary for the running and operation thereof, the same being the undivided seventy per cent. of all the rolling stock or equipment owned by The Union Pacific Railway Company or in which said company has any interest; also all the lines of telegraph, telegraph material, instruments, fixtures and appliances belonging to the said railway company and located upon or used in connection with said premises; also all furniture, fixtures, appliances, apparatus, supplies, and material owned, acquired or provided by said Company for use in connection with said railroad and premises, located in the various offices of said railway company upon or remote from said railroad including the offices of said company in the Cities of Omaha, Nebraska, and Boston, Massachusetts, and also all the property real, personal and mixed of said The Union Pacific Railway Company, and all its rights and interests in and to property of every kind and nature, whether of the character herein described or otherwise, and in whosesoever possession the same may be, and the corporate rights and franchises of said The Union Pacific Railroad Company or its successor The Union Pacific Railway Company, so far as such property, rights, interests and franchises pertain to the said railroad, telegraph and premises; also all the moneys, credits and property not herein otherwise specified, in the possession of or under the control of the said Receivers, or to which said Receivers are or may be entitled, which have been or may be derived by said Receivers from or on account of said premises, or from the sale or other disposition of any of said property,

r from the operation of the said premises by said Receivers, ubject to the charges of the Receivers in respect thereof.

Said lands above referred to as standing in the names of Trustees for the said The Union Pacific Railway Company are more particularly described as follows, viz:

| Description. | Acres |
|---|---|
| POTTAWATTAMIE COUNTY, IOWA. | |
| Commencing at a point 471.5 ft. South of the northeast corner of the NW ¼ of SE ¼ of Sec. 34, T. 75 N. R. 44 W. of the 5th P. M., thence (taking the 40 acre line for due north and south line) S 57 deg. 31 min. W. 369.23 ft.; thence West to a point 676.5 ft. south and 329.34 ft. east of the center of said Sec. 34; thence south parallel with the North and South center line of said Sec. 34,660 ft. to a point in the present North Right of Way line of the Union Pacific Ry. Co.; thence East on said R. O. W. line 913.16 ft.; thence Northeasterly 89 ft. to a point in 40 acre line 60 ft. more or less North of the SE corner of the NW ¼ of SE ¼ of said Sec. 34; thence North on said 40 acre line 795.3 feet to the place of beginning, containing an area of ..... | 15.42 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| A tract in the NE ¼ of SE ¼ of Sec. 34 T. 75 N. R. 44 W. of 5th P. M. of Iowa, described as follows: Commencing at a point 185.3 ft. South from the East quarter section corner of said Sec. 34, running thence south on Section line 389.2 ft. or to grounds as now owned by Union Pac. Railway Co.; thence Southwesterly on Northerly line of said grounds 1484 feet to West line of said NE ¼ of SE ¼; thence North on said line 1080 ft.; thence East 1323 feet or to place of beginning. | |
| Except tract sold to S. H. Finney, described as follows: Commencing at a point 537 feet south from the East ¼ Section corner of said Sec. 34 and running thence south 39½ ft. to Union Pacific Ry. grounds; thence southwesterly on northerly line of said grounds 270¾ feet; thence N. 30 deg. W. 188¾ ft.; thence East 335 ft. to place of beginning, containing 0.737 of an acre..... | 21.56 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| SW ¼ of NE ¼ and NW ¼ of Sec. 2 and all Sec. 3, all in Township 74, Range 44 West | 791.10 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| A tract of land in the NE ¼ of SE ¼ Sec. 34, T. 75 N. R. 44 W. in Pottawattamie Co., Iowa, described as follows: Commencing at a point 537 ft. south from the East ¼ Section corner of said section 34, and running thence south 39½ feet to U. P. Ry. ground; thence southwesterly on northerly line of said grounds 270¾ feet; thence north 30 deg. West 188¾; thence East 335 feet to place of beginning, containing an area of | 0.74 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| The East 44 feet of Lot 1; the East 44 feet and the west 22 feet of Lot 2, and all of lots 3 and 5, all in Block 9 in Grimes Addition to Council Bluffs | 0.66 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Part of Lots 4 and 6 in Block 9 in Grimes Addition to Council Bluffs not in Union Avenue | 0.44 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| That portion of Lot 7 in Block 9 in Grimes Addition to the City of Council Bluffs not taken and used for the Right of Way of "Union Avenue" | 0.02 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Part of Lots 1, 2, 3, 4, and 5, in Block 13, in Bayliss Addition to Council Bluffs not in Union Avenue | 0.57 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| An undivided half of Lots 1, 2, and 3 in Block 11 in the Subdivision of Riddle Tract in the City of Council Bluffs | |
| All the interest of J. S. Casement, Mary Lockwood Casement, Robert L. Casement, Grey Casement and Daniel Wells Casement in and to Lots 1, 2 and 3 in Block 11 in Riddle's Sub-division of the City of Council Bluffs, Iowa | 0.36 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| the North 35⅓ feet of Lot 14 and all of Lots 15 & in Block 11; all in the Subdivision of the Riddle act, City of Council Bluffs ..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.32 |
| l of Lot 17 in Block 11 in Sub-division of the Riddle act, City of Council Bluffs ..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.12 |
| ll of Lot No. 18 in Block 11 in Sub-division of Riddle act, City of Council Bluffs ..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.12 |
| ll of Lot 19 in block 11 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.12 |
| All of Lot 20 in Block 11 in the Sub-disivion of the Riddle tract in the City of Council Bluffs ..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.12 |
| All of Lots 1, 2, 9, & 10 in Block 12; also the North 22⅔ ft. of Lot 3 in Block 12 and the North 22⅔ ft. of Lot 11 in Block 12 and the North 113⅓ ft. of lot 8 in Blk. 12; all in the sub-division of the Riddle tract of Council Bluffs..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.70 |
| All Lot 1 in Block 33 in the Sub-division of the Riddle tract in the City of Council Bluffs..... All of Lot No. 2 in Block No. 33 in Sub-division of the Riddle tract, City of Council Bluffs..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.25 |
| All Lot 3 in Block 33 in Sub-division of the Riddle tract in the City of Council Bluffs..... | 0.25 |
| All of Lot 12 in Block 33, Riddle's Sub-division of the City of Council Bluffs ..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.25 |
| All of Lots 13 and 14 in Block 33 in Sub-division of Riddle tract, City of Council Bluffs..... ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.25 |

| Description. | Acres. |
|---|---|
| All of Lot 15, Block 33 in the Sub-division of Riddle tract, City of Council Bluffs ..... | |
| All Lot 16 in Block 33 in the Sub-division of the Riddle tract in the City of Council Bluffs..... | 0.20 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 1 in Block 34 in Sub-division of the Riddle tract, City of Council Bluffs. | |
| Lots 2 and 3 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs..... | 0.37 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 12, 13 and 14 in Block 34 in Sub-division of Riddle tract, City of Council Bluffs ..... | 0.38 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 15 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.10 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lot 16 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.10 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 14 in the Block 37 in Sub-division of the Riddle tract, City of Council Bluffs ..... | 0.13 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lots 1, 2 & 3 in Block 38 in Sub-division of the Riddle tract, City of Council Bluffs ..... | 0.37 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lot 11 in Block 38 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.12 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All Lots 12, 13 & 14 in Block 38 in the Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.37 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| All of Lot 15 in Block 38 in Sub-division of the Riddle tract, City of Council Bluffs ..... | |
| All of Lot 16 in Block 38 in Sub-division of the Riddle tract in the City of Council Bluffs ..... | 0.18 |
| DEXTER, ATKINS & LANE, TRUSTEES. | |

## DOUGLAS COUNTY, NEBRASKA.

### City of Omaha.

| Description. | Acres. |
|---|---|
| Lots 2 and 3 in Block 208 in the City of Omaha, as surveyed and lithographed ..... Atkins, Baker & McFarland, Trustees. | 0.40 |
| Lot 4 in Block 208 in the City of Omaha, as surveyed and platted ..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Lot 5 in Block 208 in the City of Omaha, as surveyed and platted ..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Lot 6 in Block 208 in the City of Omaha ..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Lot 2 in Block 215 in the City of Omaha..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Lot 3 in Block 215 in the City of Omaha..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Lot 4 in Block No. 215 in the City of Omaha, as surveyed and platted..... Atkins, Baker & McFarland, Trustees. | 0.20 |
| Part of Lot 2 (being 2,178 sq. ft.), in Block No. 226, in the City of Omaha, according to the recorded plat thereof ..... Atkins, Dexter & Lane, Trustees. | |
| Commencing at a point 346 feet north of the SE corner of the SW ¼ of the SW ¼ of section 23 in T 15 N of R 13 E of the 6th P. M.; thence east 410 feet; thence south 88 ft.; thence west 240 ft.; thence north 56 ft.; thence west 170 feet; thence north 32 feet to the place of beginning. Containing 26,560 square feet..... Atkins, Baker & McFarland Trustees., | 0.61 |
| Lots 5, 6 & 7 in Block F..... Dexter, Atkins & Mink, Trustees. | 0.60 |

| Description. | Acres. |
|---|---|
| Lot 1 in Block 178 in the City of Omaha, as surveyed and lithographed<br>ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.20 |
| All Lots numbers 2 and 3 in Block No. 178 in the City of Omaha<br>ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.40 |
| All the following described Real Estate, situated in the City of Omaha, County of Douglas and State of Nebraska, to-wit: Lots 5, 6, 7 & 8 in Block 178; Lots 6, 7 & 8 in Block 179<br>ATKINS, BAKER & MCFARLAND, TRUSTEES. | 1.22 |
| Lot 5 in Block 179 as surveyed and platted by the Council Bluffs and Nebraska Ferry Co<br>DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot No. 5 in Block 180 in the City of Omaha<br>ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.20 |
| Lot No. 6 and 8 in Block 180 in the City of Omaha.<br>ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.40 |
| Lot 4 in Block 181<br>DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| All Lots 1 & 4 in Block 188 in the City of Omaha. Also a parcel of land adjoining said Lot 1 on the East, commencing at the NE corner of said Lot 1 in Block 188 aforesaid; thence South 132 feet to the SE corner of said Lot 1; thence East 20 feet; thence North 133 ft.; thence west 20 ft. to place of beginning. Containing 2640 square feet<br>ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.46 |
| All Lots 2 and 3 Block 188 in the City of Omaha...<br>ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.40 |
| All of Lots 1, 2 & 3 Block 189 South of Right of Way of the U. P. Ry. containing $1\frac{8}{8}$ of a regular City lot..<br>ATKINS, BAKER & MCFARLAND, TRUSTEES. | 0.32 |

| Description. | Acres. |
|---|---|
| All that portion of Lot 4 in Block 189 in the City of Omaha not included in a certain grant for Right of Way made to the Union Pacific Railroad Company by deed dated March 3, 1864, and recorded on the 21st day of the same month in Book "P" of deeds at Page 301 of the records of said Douglas County ... | 0.02 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Part of Lot 2 (being 6,534 sq. ft.) in Block 226 in the City of Omaha, according to the Recorded Plat thereof ..... | |
| Lots 7, 8, 9 & 10 in Block 15 and fractional Block 17 in the Town of Millard ..... | 0.33 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lots 7, 8, 9 & 10 in Block 23 in the Town of Waterloo. | 0.75 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## DODGE COUNTY NEBRASKA.

| | |
|---|---|
| Lots 1 & 2 in Block C in the City of North Bend .... Lot 5 in Block 53 in the City of North Bend, except the East 15 feet of Lot ..... | 1.42 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## PLATTE COUNTY NEBRASKA.

CITY OF COLUMBUS.

| | |
|---|---|
| Lot 3 & 4 in Block 41 ..... | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEE. | |
| Lot 7 in Block 58 ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3 & 4 in Block 59 ..... | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 4 in Block 77 ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3 in Block 80 ..... | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| Lot 1 & 2 in Block 86 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 8 in Block 100 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 5 and 6 in Block 101 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 in Block 102 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3 & 4 in Block 110 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 5 in Block 112 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 2 & 7 in Block 113 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 & 8 in Block 121 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 in Block 125 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 6 in Block 145 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 in Block 159 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 8 in Block 168 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 5 in Block 187 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 3 & 4 in Block 190 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 7 in Block 195 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lot 1 in Block 199 | 0.20 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

| Description. | Acres. |
|---|---|
| Lot 1 in Block 209 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 6 in Block 211 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 7 in Block 224 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 1 & 7 in Block 225 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.40 |
| Lot 2 in Block 229 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 6 in Block 231 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Lot 3, 5 & 6 in Block 232 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.60 |
| Lot 2 in Block 234 ..... DEXTER, ATKINS, & MINK, TRUSTEES. | 0.20 |
| Lot 2 in Block 259 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.20 |
| Out Lot 7 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 11.65 |
| Out Lot 9 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 7.75 |
| SE ¼ NW ¼ Sec. 20—17—1 W ..... DEXTER, ATKINS & MINK, TRUSTEES. | 40.00 |

## HALL COUNTY, NEBRASKA.

CITY OF GRAND ISLAND.

| | |
|---|---|
| Lots 5, 6, 7 & 8 in Block 39 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.80 |
| Lots 5, 6, 7 & 8 in Block 40 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.80 |
| Lots 5, 6, 7 & 8 in Block 41 ..... DEXTER, ATKINS & MINK, TRUSTEES. | 0.80 |

| Description. | Acres. |
|---|---|
| Lots 3, 4, 5 & 6 in Block 42 | 0.80 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| First addition to Grand Island. | |
| Frac. Lot 7 in Block 105 | 0.03 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## BUFFALO COUNTY, NEBRASKA.

### KEARNEY JUNCTION.

| | |
|---|---|
| Lots 89, 602, 719 | 0.40 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| (Park) Lots 1398, 1399, 1400, 1404, 1405, & 1406 | 0.90 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |
| Lots 1477 | 0.15 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

## LARAMIE COUNTY, WYOMING.

### CITY OF CHEYENNE.

| | |
|---|---|
| Fractional Lot No. 1 in Block 833; Also Lots 1, 2 & 3 and frac. Lots 4, 5, 6, 7 & 8 in Block 834. Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 835; All in Section 32, T. 14 N. R. 66 W.; Also lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 386; Also Lots No. 1, 2, 3, 4, 5, 6, 7 & 8 in Block 837; Also Lots Nos. 1, 2, 3, 4, 5, 6, 7 & 8 in Block 838; Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 839—All in Section 32, T. 24, N. R. 66 W., as designated on the official plat of Townsite of said City of Cheyenne | 9.86 |
| ATKINS, BAKER & MCFARLAND, TRUSTEES. | |
| Lot 22 in Block 122, City of Laramie | 0.72 |
| DEXTER, ATKINS & MINK, TRUSTEES. | |

### SODA LAKES, NEAR LARAMIE, WYOMING.

| | |
|---|---|
| SW ¼ of NW ¼ of NE ¼<br>NW ¼ of SW ¼ of NE ¼<br>E ½ of NW ¼<br>S ½ of NW ¼ of NW ¼<br>NE ¼ of SW ¼ of NW ¼ | Sec. 4, T. 14, N. R., 75 W. |

| Description. | Acres. |
|---|---|
| N ½ of NW ¼ of SW ¼ Sec. 5, T. 14, N. R., 75 W.; NE ¼ of NE ¼ of SE ¼ Sec. 6, T. 14, N. R., 75 W.; SE ¼ of SE ¼ of SW ¼ Sec.. 33, T. 15, N. R., 75 W., Also all claim in and to other portions of Sec's 4 & 5, T. 14 N. R. 75-W. and in and to other portions of Sec. 33 T. 15 N. R. 75, which may have been at any time vested in those through whom above property was obtained | 200.00 |

DEXTER, ATKINS & MINK, TRUSTEES.

## WEBER COUNTY, UTAH.

| | |
|---|---|
| A part of lot 6 in Block 4 in South Ogden Survey, beginning at the northwest corner of said lot 6 and running thence south 20 rods; thence east 10 rods; thence north 2½ rods; thence east 2 rods; thence north 17½ rods; thence west 12 rods to place of beginning | 1.47 |

ATKINS, DEXTER & LANE, TRUSTEES.

TO HAVE AND TO HOLD all and singular the above mentioned and described railroad, telegraph, rolling stock, franchises and property of every kind and description hereinbefore mentioned and conveyed, or intended to be conveyed, unto the said UNION PACIFIC RAILROAD COMPANY, party of the fourth part hereto, being the corporation organized and existing under and pursuant to the laws of the State of Utah, and to its successors and assigns forever, as fully and absolutely as the party of the first part may or ought by virtue of the said decrees to convey the same; SAVING AND EXCEPTING the right of the Government to have the preference at all times in the use, at fair and reasonable rates of compensation, to be paid to the party of the fourth part, not to exceed the amounts paid by private parties for the same kind of service, of said telegraph line and railroad, for the transmission of despatches over said telegraph line, and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the Government, whenever required by any Department thereof;

AND SUBJECT TO AND SAVING the title of The American Loan and Trust Company, and those claiming under the

Equipment Trust Indenture of the Union Pacific Railway Company to the said The American Loan and Trust Company, dated October 1st, 1887, to the extent that and so far as the said indenture affects the portion of the equipment therein embraced, which is adjudged in said decrees to pertain to said mortgaged premises, and to the extent of the purchase money indebtedness in said decrees found to be outstanding thereunder; AND SUBJECT TO AND SAVING the lien of the Omaha Bridge Mortgage of The Union Pacific Railroad Company to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as trustees, dated the first day of April, 1871, and the indenture supplemental thereto, dated the 27th day of September, 1871, and the lien of the Omaha Bridge Renewal Mortgage, executed by The Union Pacific Railway Company to the Central Trust Company of New York, as trustee, dated the first day of October, 1885, upon and in respect of the premises embraced in and covered by said Bridge Mortgages, and to the extent of the indebtedness thereby secured and in said decrees found to be outstanding and unpaid; AND SUBJECT TO AND SAVING, the lien of the First Mortgage, dated November 1, 1865, executed by said The Union Pacific Railroad Company to Edwin D. Morgan and Oakes Ames as Trustees, upon, to the extent, and in respect of, the premises embraced in said First Mortgage as in said decrees described and defined; SUBJECT, ALSO, to the possession and rights of the Receivers, as provided in said decrees; AND SAVING AND SUBJECT to all the title, estate, claim and rights of the purchasers, and the assigns of such purchasers and their successors, under a certain decree entered by the Circuit Court of the United States for the District of Nebraska, on the 29th day of July, 1897, in a certain cause therein pending wherein F. Gordon Dexter and Oliver Ames, Second, Trustees, were complainants, and said The Union Pacific Railway Company and others were defendants, and under certain decrees entered by the Circuit Courts of the United States for the Southern District of Iowa and the Districts of Wyoming, Colorado and Utah, and under a deed bearing even date herewith, executed by the said William D. Cornish, as Special Master, and others pursuant to said decree.

AND SUBJECT also to the further express condition that the party hereto of the fourth part, its successors

assigns, shall as part consideration and purchase price the property purchased and herein conveyed, and in ddition to the sums required by said decrees to be paid, nd paid, take the same and receive this deed therefor pon the express condition that it or its successors or ssigns shall, as provided in said decrees, pay, satisfy and ischarge the obligations, liabilities and charges in said everal decrees, specified as follows:

FIRST: All the proper costs of said causes and of he expenses of the sale under said decrees, including the ompensation and necessary expenses of the Special Master ppointed to make the sale;

SECOND: The charges, compensation, allowances and disbursements of the complainants and any of the other parties to said causes entitled thereto, their solicitors and counsel;

AND SUBJECT ALSO to all other terms, conditions and reservations of each of the said several decrees of foreclosure and sale and the several decrees confirming the said sale entered in the United States Circuit Courts for the District of Nebraska, the Southern District of Iowa, the Districts of Wyoming, Colorado and Utah, respectively, whether in this indenture expressly referred to or not, including the reservation of the said Courts to retake and resell the premises herein conveyed in case the party of the fourth part to this indenture or its successors or assigns should fail to pay any sum required to be paid under the said decrees within the time specified in said decrees respectively after the entry of an order requiring such payment.

It being the true intent and purpose hereof to convey all the property and premises directed by the said decrees to be conveyed, whether the same are in this Indenture particularly described or not, subject to all prior mortgages, liens and incumbrances in said decrees found or established, and subject to all the reservations, conditions and terms in said decrees prescribed.

AND THIS INDENTURE FURTHER WITNESSETH, that said The Union Pacific Railway Company, party hereto of the second part, for and in consideration of the premises and in pursuance of the said decrees and orders of the said Courts respectively, has bargained, sold, assigned, transferred, conveyed and released, and by these presents does bargain, sell,

assign, transfer, convey and release unto the party hereto of the fourth part, all the right, title and interest of The Union Pacific Railway Company, party hereto of the second part, in and to the said railroad, rights, properties, functions, franchises, privileges, immunities, money and credits which by the said decrees were ordered to be sold, and all the property described in the said decrees and therein ordered to be sold and herein conveyed, assigned, transferred or released by the parties of the first, second and third parts, respectively, to this Indenture, as fully and absolutely as the said party of the second part hereto can or ought by virtue of the said decrees to convey the same: TO HAVE AND TO HOLD all and singular the said railroad, premises and property, real and personal, unto the said party of the fourth part hereto, its successors and assigns forever.

AND THIS INDENTURE FURTHER WITNESSETH that the said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, being the purchasers at the said sale of the said railroad, property and premises herein conveyed by the said Special Master under the said decrees of foreclosure, having assigned, transferred and set over, as hereinbefore recited unto the party of the fourth part their said bid and their right to receive conveyance of the railroad, franchises, and other property purchased, and all their other rights under the said decrees, or by virtue of their said bid and purchase, do hereby join in the execution of this Indenture for the purpose of releasing and confirming, and they do hereby release and confirm unto the said Union Pacific Railroad Company, party hereto of the fourth part, and its successors and assigns forever all of their right, title and interest in and to the property and premises in this Indenture conveyed and each and every part thereof.

It is understood that no personal covenant or liability shall be implied against the party of the first part, or the parties of the second part, or either of them, by reason of the execution of this deed.

In order to facilitate the recording hereof, twenty-five originals of this Indenture have been executed, acknowledged and delivered by the respective parties, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered, shall be deemed an original and all collectively but one instrument.

IN WITNESS WHEREOF, the said parties hereto of the first and third parts, have hereunto set their hands and seals and the parties of the second and fourth parts have caused these presents to be signed by their respective officers, duly authorized, and their respective corporate seals to be hereto affixed, and attested by their respective secretaries the day and year first above written.

WILLIAM D. CORNISH (Seal),
Special Master.

LOUIS FITZGERALD (Seal),
ALVIN W. KRECH (Seal),
Purchasing Trustees.

THE UNION PACIFIC RAILWAY COMPANY,
By S. H. H. CLARK,

(SEAL) President.
(SEAL)
Attest: ALEX. MILLAR,
Secretary.

UNION PACIFIC RAILWAY COMPANY,
(SEAL) By HORACE G. BURT,
President.

Attest: ALEX. MILLAR,
Secretary.

Signed, sealed and delivered by William D. Cornish, Louis Fitzgerald and Alvin W. Krech, in the presence of:
G. V. Turner,
Walter S. Wilson.

By S. H. H. Clark, President, in behalf of the Union Pacific Railway Company in the presence of:
T. M. Orr,
F. C. Davis.

By Alex. Millar, Secretary, in behalf of The Union Pacific Railway Company, in the presence of:
L. F. Timmerman,
Joseph F. Daly.

By Horace G. Burt, President and Alex. Millar, Secretary, in behalf of Union Pacific Railroad Company, in the presence of:
James A. Case,
G. G. Boardman.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.

I, EDWARD VAN INGEN, a Notary Public in and for the State and County aforesaid, do hereby certify that William D. Cornish, Special Master appointed by the United States Circuit Courts for the District of Nebraska, the Southern District of Iowa, the Districts of Wyoming, Colorado and Utah, in the causes in the foregoing Deed of Conveyance mentioned for the purpose of making the sale therein referred to and whose name is signed to the foregoing deed of conveyance or writing bearing date on the 22nd day of January, 1898, and who is personally known to me and known to me to be the same person who executed the same, has this day personally appeared before me, the subscriber, and has duly acknowledged the same before me in my State and County aforesaid to be his voluntary act and deed, and duly acknowledged that he executed the same as his free and voluntary act and deed for the uses, purposes and considerations therein expressed and mentioned, to the end that the same might be recorded as such.

Given under my hand and official seal this 25th day of January, in the year one thousand eight hundred and ninety-eight. My commission expires March 30th, 1899.

EDWARD VAN INGEN,
[SEAL] Notary Public for the City and County of New York, State of New York.

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STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.

I, WILLIAM SOHMER, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the said Court being a Court of Record having a seal, do hereby certify that Edward Van Ingen, before and by whom the foregoing acknowledgment was taken, was, at the time of taking the same, a Notary Public residing in said county, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the said acknowledgments thereof are in due form

law, and that said deed is executed and acknowledged ecording to the law of the State of New York.

And further, that I am well acquainted with the hand- riting of said Edward Van Ingen, Notary Public, and that verily believe the signature to said certificate of acknowl- dgment is genuine.

In Witness Whereof, I have hereunto set my hand nd affixed the seal of the said Court and County the 26th lay of January, 1898.

[SEAL] WM. SOHMER, Clerk.

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STATE OF TEXAS, } ss.
COUNTY OF BEXAR, }

I, F. C. DAVIS, Notary Public, in and for the said County, in the State aforesaid, duly commissioned for and sworn as such officer, do hereby certify that there personally appeared before me S. H. H. Clark, the President of The Union Pacific Railway Company, personally known to me to be such President, and personally known to me, and known to me to be the same person whose name is signed to the foregoing instrument, and he acknowledged to me that he signed, sealed and acknowledged the same as his own free and voluntary act and deed, and as the free and voluntary act and deed of the said company.

And the said S. H. H. Clark also made oath and said that he knows the corporate seal of the said Company; that the seal affixed to the foregoing instrument is the corporate seal of the said Company; and that it was so affixed by order of the Board of Directors of the said Company, and that the said S. H. H. Clark signed the name of said Company and his own name thereto as President by like order of said Board of Directors and that the said instrument was signed, sealed and acknowledged for the uses and purposes therein set forth, and to the end that the same might be duly recorded.

Given under my hand and official seal this 22d day of January, A. D. 1898. My Commission expires June 29th, 1899.

[SEAL] F. C. DAVIS,
Notary Public for the County and State aforesaid.

THE STATE OF TEXAS, }
COUNTY OF BEXAR, } ss.

I, Thad W. Smith, Clerk of the County Court in and for said County and State, which Court is a Court of record having a seal, do hereby certify that F. C. Davis, Notary Public, by and before whom the foregoing acknowledgment was taken, was at the time of taking the same a Notary Public residing in said County, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of the said State of Texas, and further, that I am well acquainted with the handwriting of said F. C. Davis, Notary Public, and that I verily believe the signature to said certificate of acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 22d day of January, 1898.

THAD W. SMITH,
[SEAL.] County Clerk, Bexar County, Texas.
By.....Deputy.

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STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } ss.

I, Edward Van Ingen, Notary Public in and for the said County in the State aforesaid, duly commissioned and sworn as such officer, do hereby certify that there personally appeared before me, Alex. Millar, the Secretary of the Union Pacific Railway Company, personally known to me to be such secretary, and personally known to me to be the same person whose name is signed to the foregoing instrument, and he acknowledged to me that he signed, sealed and acknowledged the same as his own free and voluntary act and deed and as the free and voluntary act and deed of the said company. And the said Alex. Millar also made oath and said that he knows the corporate seal of the said company, that the seal affixed to the foregoing instrument is the corporate seal of said Company, and that it was so affixed by order of the Board of Directors of the said company, and that S. H. H.

ark signed the name of said company and his own name ereto as president, and the said Alex. Miliar signed his name ereto as secretary by like order of said Board of Directors; nd that the said instrument was signed, sealed and acknowdged for the uses and purposes therein set forth, and to the nd that the same might be duly recorded.

Given under my hand and official seal this 25th day of anuary, A. D. 1898. My commission expires March 30th, 899.

[SEAL] EDWARD VAN INGEN,

Notary Public for the City and County of New York, State of New York.

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STATE OF NEW YORK, } ss.
COUNTY OF NEW YORK, }

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the said Court being a Court of record having a seal, do hereby certify that Edward Van Ingen, before and by whom the foregoing acknowledgment was taken, was, at the time of taking the same, a Notary Public residing in said County, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the said acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of the State of New York. And further, that I am well acquainted with the handwriting of said Edward Van Ingen, Notary Public, and that I verily believe the signature to said certificate of acknowledgment is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 26th day of January, 1898.

WM. SOHMER, Clerk.

[SEAL]

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } ss.

I, Edward Van Ingen, a Notary Public in and for the State and County aforesaid, do hereby certify that Louis Fitzgerald and Alvin W. Krech, named in and whose names are signed to the foregoing deed of conveyance or writing, bearing date on the 22d day of January, 1898, and who are personally known to me and known to me to be the same persons who executed the same, have this day personally appeared before me, the subscriber, and have severally acknowledged the same before me, in my State and County aforesaid, to be their act and deed, and severally duly acknowledge that they executed the same as their free and voluntary act and deed for the uses, considerations and purposes therein expressed and mentioned, to the end that the same might be recorded as such.

Given under my hand and official seal this 26th day of January, in the year one thousand eight hundred and ninety-eight. My commission expires March 30th, 1899.

[SEAL] EDWARD VAN INGEN,
Notary Public for the City and County of New York, State of New York.

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STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the said Court being a Court of Record having a seal, do hereby certify that Edward Van Ingen, before and by whom the foregoing acknowledgment was taken, was, at the time of taking the same, a Notary Public residing in said County, and was duly authorized by the laws of the said State, to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the said acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of the State of New York. And further, that I am well acquainted with the handwriting of said Edward Van Ingen, Notary Public, and that I verily believe the signature to said certificate of acknowledgment is genuine.

In Witness Whereof, I have here unto set my hand and affixed the seal of the said Court and County the 26th day of January, 1898.

[seal] Wm. Sohmer,
Clerk.

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State of New York,
City and County of New York, } ss.

I, Edward Van Ingen, Notary Public in and for the said City and County in the State aforesaid, duly commissioned and sworn as such officer, do hereby certify that there personally appeared before me Horace G. Burt, the President, and Alex. Millar, the Secretary of Union Pacific Railroad Company, party of the fourth part in the foregoing indenture, personally known to me to be such president and secretary respectively, and personally known to me to be the same persons whose names are signed to the foregoing instrument, and they severally acknowledged to me that they signed, sealed and acknowledged the same as their own free and voluntary act and deed and as the free and voluntary act and deed of the said company. And the said Horace G. Burt and Alex. Millar also made oath and said that they know the corporate seal of the said company, that the seal affixed to the foregoing instrument is the corporate seal of said company, and that it was so affixed by order of the Board of Directors, of the said Company, and that the said Horace G. Burt signed the name of said company and his own name thereto as president and the said Alex. Millar signed his name thereto as Secretary by like order of said Board of Directors, and that the said instrument was signed, sealed and acknowledged the like order of said Board of Directors, and that the said instrument was signed, sealed and acknowledged for the uses and purposes therein set forth, and to the end that the same might be duly recorded.

Given under my hand and official seal this 25th day of January, A. D. 1898. My Commission expires March 30th, 1899.

[seal] Edward Van Ingen,
Notary Public for the City and County of New York, State of New York.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the said Court being a Court of Record having a seal, do hereby certify that Edward Van Ingen, before and by whom the foregoing acknowledgment was taken, was, at the time of taking the same, a Notary Public residing in said County, and was duly authorized by the laws of the said State to take and certify acknowledgments or proofs of deeds of land in said State, and that said conveyance and the said acknowledgment thereof are in due form of law, and that said deed is executed and acknowledged according to the law of the State of New York. And further, that I am well acquainted with the handwriting of said Edward Van Ingen, Notary Public, and that I verily believe the signature to said certificate of acknowledgment is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 26th day of January, 1898.

[SEAL] WM. SOHMER,
Clerk.

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It is agreed by and between the parties hereto that at the time of the construction of the Union Pacific Railroad, in 1865, said Railroad crossed the southern boundary of the limits of the city of Omaha at a point at what is now known as the east line of Twentieth street in said city, and that said southern boundary was defined by an act of the Legislature of the State of Nebraska, dated February 11, 1865, and that said boundary limit, at the place where it is crossed by said Railroad, was not changed until 1887.

It is also agreed that the west end of the bridge across the Missouri River, belonging to the Respondent, Union Pacific Railroad Company, is about 700 feet east from the the original , natural level, and present level, of the surface of the ground, and that the embankment from the west end of the bridge to the present original level is about 700 feet in length.

United States of America,
District of Nebraska,
County of Douglas, } ss.

I, Charles W. Pearsall, the Special Examiner appointed by the United States Circuit Court for the District of Nebraska in the above entitled cause, and also a skillful stenographer and typewriter, do hereby certify that at the several times and places mentioned in the foregoing depositions, the parties plaintiff and defendant by their respective counsel, duly appeared before me and produced their witnesses; that the said parties by their respective counsel, stipulated and agreed that I should take the testimony of the witnesses as the same was delivered by them, in shorthand and afterwards extend the same in typewriting and print the same; that each of the said witnesses before he delivered his testimony, was duly sworn by me to state the truth, the whole truth and nothing but the truth in answer to the interrogatories propounded to him by the counsel for the respective parties upon his examination and re-examination. That as he delivered his testimony, I took the same in shorthand and afterwards extended the same in typewriting and printed the same: and that the said parties by their respective counsel stipulated and agreed to waive the signing of each deposition by the witness, giving the same; that the foregoing are the depositions of the several witnesses taken by me as aforesaid, and that I took the said deposition as the several witnesses delivered the same, accurately and extended the same in typewriting and printed the same, and the above and foregoing are the depositions so delivered by the said witnesses and all thereof; and the same is herewith returned; and the foregoing constitutes and is all the testimony produced by the respective parties hereto, except certain exhibits being exhibits numbered respectively 1, 2, 4a, 4b, 4c, 4d, 5, 7, 8, 9, 10, 11, 12, 13, 14 and 17, which exhibits being too bulky to be printed, are herewith returned to the clerk of said court. Said exhibits, together with the foregoing printed pages, constitute all the testimony produced and offered herein by the respective parties hereto.

Charles W. Pearsall,
*Special Examiner.*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that this volume, paged from 537 to 1077, inclusive, comprises a part of and is embraced within the certificate to the transcript of record in the case of Union Pacific Railroad Company, appellant, *vs.* Mason City and Fort Dodge Railroad Company, No. 1975.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at office in the city of St. Louis, Missouri, in the eighth circuit, this twenty-third day of April, A. D. 1904.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,

*Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.*

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 18.

UNION PACIFIC RAILROAD COMPANY,
Appellant,

vs.

MASON CITY AND FORT DODGE RAILROAD COMPANY,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

## BRIEF OF APPELLANT.

### STATEMENT OF THE CASE.

This is a suit in equity brought by the Mason City & Fort Dodge Railroad Company, a corporation organized under the laws of the State of Iowa, appellee, against the Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah, appellant, in which appellee prayed for a decree ordering appellant to admit appellee into the full, equal and joint use with other railroad companies of the main and passing tracks of appellant then located or established between the eastern terminus of appellants' tracks in the

City of Council Bluffs, Iowa, and the City of South Omaha, Nebraska, including the bridge over which said tracks extend across the Missouri river between the cities of Council Bluffs and Omaha; also of the side and spur tracks leading from the main tracks; also of the passenger station of appellant in the City of Omaha, and tracks and facilities connected therewith, and in general all of the tracks and side-tracks, stations and terminal facilities belonging to the appellant at and between the cities of Council Bluffs, Iowa, and Omaha, and South Omaha, Nebraska (Record, p. 61).

To enable this Court to more clearly understand this matter, a brief history of the formation of the various companies owning the properties in question at different times and of the facts leading up to the present controversy, may be of value.

Upon July 1, 1862, there was incorporated under Act of Congress the original company, called *The* Union Pacific *Railroad* Company, which will be hereinafter referred to as the First Pacific Company (12 U. S. Stat., 489). Upon January 24, 1880, this original company was consolidated with companies owning other lines, and the consolidation became known as the Union Pacific Railway Company, hereinafter called the Second Pacific Company. During the year 1897, there was incorporated under the laws of Utah the Union Pacific Railroad Company, the appellant herein.

The First Pacific Company was given a grant of lands and a bonus of $16,000 per mile in Government bonds, under the Incorporation Act. On March 7, 1864, President Lincoln fixed as the eastern terminus

of the Union Pacific Railroad "a point on the *western boundary of the State of Iowa* east of and opposite to the east line of section 10, in township 15, north of range 13, and east of the 6th principal meridian in the Territory of Nebraska" (Record of Pleadings, p. 6).

On July 2, 1864, there was passed an act, giving in section 10 thereof the First Pacific Company the right to execute a first mortgage on its said railroad which should be prior to the Government lien, for the same amount as the Government subsidy bonds (13 U. S. Stat., 356, 360).

Under the Acts of July 1, 1862, and July 2, 1864, and upon March 1, 1865, there was placed upon the line of the company what is known as the Union Pacific First Mortgage, which is referred to on page 591 of the Record, Evidence, Vol. II. This mortgage covered all the company's property, including all bridges along the company's line, already built, or which might thereafter be built, for the use of the said railroad, and since the Missouri River bridge in question was constructed as a part of the Union Pacific Railroad in its entirety, the said bridge was covered by the terms of said First Mortgage. The construction of the bridge was commenced in the year 1869 under the original grant from Congress. This court so definitely decided in the case of *Union Pacific R. R. Co. vs. Hall*, 91 U. S., 343, 352:

> "It seems to be clear that the bridge over the river, built by the railroad company, is a part of their railroad, and required by law to be so operated. It was commenced in 1869 under the acts of 1862 and 1864."

After the First Mortgage was placed upon the property and the road as an entirety, and after the commencement of the construction of the bridge, and after the sale of all the First Mortgage bonds above referred to (see Opinion of Judge SANBORN in Union Pacific foreclosure suit, Record Evidence, page 352), it was found that additional funds would be necessary to complete the construction of the bridge, and the company sent Grenville M. Dodge and others to Washington, and they procured the passage of the Act of February 24, 1871, under which the company mortgaged the bridge separately from the rest of the company's property, and raised the necessary money with which to complete it.

This act is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That for the more perfect connection of any railroads that are or shall be constructed to the Missouri River, at or near Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company be, and it is hereby, authorized to issue such bonds, and secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge over said river, and the tracks and depots required to perfect the same, as now authorized by law of Congress; and said bridge may be so constructed as to provide for the passage of ordinary vehicles and travel, and said company may levy and collect tolls and charges for the use of the same; and *for the use and protection* of said bridge and property, the Union Pacific Railway Company shall be empowered, governed, and limited by the

provisions of the act entitled, 'An act to authorize the construction of certain bridges, and to establish them as post roads,' approved July twenty-five, eighteen hundred and sixty-six, *so far as the same is applicable thereto: And provided*, That nothing in this Act shall be so construed as to change the *eastern terminus* of the Union Pacific railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company, or its successors, from its obligation as established by existing laws: *Provided, also*, that Congress shall at all times have power to regulate said bridge, and the rates for the transportation of freight and passengers over the same, and the local travel hereinbefore provided for. And the amount of bonds herein authorized shall not exceed two and a half millions of dollars: *Provided*, That if said bridge shall be constructed as a draw-bridge, the same shall be constructed with spans of not less than two hundred feet in length in the clear on each side of the central or pivot pier of the draw" (16 Stat., 430).

The above act declares that "*for the use and protection* of said bridge and property the Union Pacific Railway Company shall be empowered, governed and limited by the provisions of the act entitled 'An act to authorize the construction of certain bridges and to establish them as post roads', approved July twenty-five, eighteen hundred and sixty-six, *so far as the same is applicable thereto*", which act is found in 14th Statutes, 244, and related to the building of certain bridges across the Mississippi and Missouri rivers. Said act is as follows:

## ACT OF JULY 25, 1866.

### CHAPTER CCXLVI.

*An act to authorize the construction of certain bridges and to establish them as post roads.*

Bridge may be built across the Mississippi River at Quincy, Illinois, and railroad tracks laid thereon.

Trains may cross for compensation.

Question of obstruction to navigation may be tried where.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri, for such purpose, to build a bridge across the Mississippi River at Quincy, Illinois, and to lay on and over said bridge railway tracks, for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge, under the limitations and conditions hereinafter provided. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said river, the cause may be tried before the District Court of the United States of any State in which any portion of said obstruction or bridge touches.

Bridge may be built with draw or unbroken spans.

SEC. 2. *And be it further enacted*, That any bridge built under the provisions of this act may, at the option of the company building the same, be built as a drawbridge, with a pivot or

Height, if made with unbroken spans. Length of spans.

other form of draw, or with unbroken or continuous spans: *Provided*, That if the said bridge shall be made with unbroken and continuous spans, it shall not be of less elevation in any case than fifty feet above the extreme high-water mark, as understood at the point of location, to the bottom chord of the bridge, nor shall the spans of said bridge be less than two hundred and fifty feet in length, and the piers of said bridge shall be parallel with the current of the river, and the main span shall be over the main channel of the river and not less than three hundred feet in length: *And, provided, also*, That if any bridge built under this act shall be constructed as a drawbridge, the same shall be constructed as a pivot drawbridge with a draw over the main channel of the river at an accessible and navigable point, and with spans of not less than one hundred and sixty feet in length in the clear on each side of the central or pivot pier of the draw, and the next adjoining spans to the draw shall not be less than two hundred and fifty feet; and said spans shall not be less than thirty feet above low-water mark, and not less than ten above extreme high-water mark, measuring to the bottom chord of the bridge, and the piers of said bridge shall be parallel with the current of the river: *And, provided also*, That said draw shall be opened promptly upon reasonable signal for the passage of boats, whose construction shall not be such as to admit of their passage under the permanent spans of said

Pivot drawbridge, with draw over main channel, and spans, etc.

Draw to be opened promptly, except, etc.

bridge, except when trains are passing over the same; but in no case shall unnecessary delay occur in opening the said draw during or after the passage of trains.

Bridges constructed according to this act to be lawful structures and post routes.

Sec. 3. *And be it further enacted*, That any bridge constructed under this act, and according to its limitations, shall be a lawful structure, and shall be recognized and known as a post route; upon which, also, no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States, than the rate per mile paid for their transportation over the railroads or public highways leading to the said bridge.

Rates of toll.

Chicago, Burlington & Quincy Railroad Company may build a railroad bridge across the Mississippi, etc.

Sec. 4. *And be it further enacted*, That it shall be lawful for the Chicago, Burlington and Quincy Railroad Company, a corporation whose road has been completed to the Mississippi River, and connects with a railroad on the opposite side thereof, having first obtained authority therefor from the States of Illinois and Iowa, to construct a railroad bridge across said river upon the same terms, in the same manner, under the same restrictions, and with the same privileges, as is provided for in this act in relation to the bridge at Quincy, Illinois.

Bridge may be built across the river at Hannibal, Missouri.

Sec. 5. *And be it further enacted*, That a bridge may be constructed at the town of Hannibal, in the State of Missouri, across the Mississippi River, so as to connect the Hannibal and St. Joseph Railroad with the Pike

County and Great Western railroads of Illinois, on the same terms and subject to the same restrictions as contained in this act for the construction of the bridge at Quincy, Illinois.

Between Prairie du Chien and North McGregor.

Sec. 6. *And be it further enacted*, That a bridge may be constructed across the Mississippi River between Prairie du Chien, in the State of Wisconsin, and North McGregor, in the State of Iowa, with the consent of the legislatures of Wisconsin and Iowa, on the same terms and subject to the same restrictions as are contained in this act for the construction of the bridge at Quincy, Illinois.

Between Keokuk and Hamilton.

Sec. 7. *And be it further enacted*, That the Keokuk and Hamilton Mississippi Bridge Company, a corporation existing under the laws of the State of Iowa, and the Hancock County Bridge Company, a corporation existing under the laws of the State of Illinois, be and are hereby authorized to construct and maintain a bridge over the Mississippi River between Keokuk, Iowa, and Hamilton, Illinois, of the same character, description, and construction as provided in this act for the bridges at Quincy and Burlington; and the said bridge, in its use and operation, shall be subject to the same restrictions that apply to said bridges at Quincy and Burlington by the terms of this act.

Between Winona and opposite bank of river, if, etc.

Sec. 8. *And be it further enacted*, That the Winona and Saint Peter Railroad Company, a corporation existing under the laws of the State of Minnesota, is hereby authorized

to construct and operate a railroad bridge across the Mississippi River between the city of Winona, in the State of Minnesota, and the opposite bank of said river in the State of Wisconsin, with the consent of the legislatures of the States of Minnesota and Wisconsin; and said bridge by this section authorized is hereby declared a post route, and subject to all the terms, restrictions, and requirements contained in the foregoing sections of this act.

This bridge made a post road.

Between Dunleith and Dubuque, if, etc.

Sec. 9. *And be it further enacted*, That a bridge may be constructed and maintained across the Mississippi River, between Dunleith, in the State of Illinois, and Dubuque, in the State of Iowa, with the consent of said States previously given or hereafter acquired, with the same privileges, upon the same terms, and under the same restrictions as are contained in this act for the construction of a bridge at Quincy, Illinois.

At the City of Kansas.

Sec. 10. *And be it further enacted*, That any company authorized by the legislature of Missouri may construct a bridge across the Missouri River at the City of Kansas, upon the same terms and conditions provided for in this act.

Between the City of St. Louis and East St. Louis.

Sec. 11. *And be it further enacted*, That the 'Saint Louis and Illinois Bridge Company,' a corporation organized under an act of the general assembly of the State of Missouri, approved February fifth, eighteen hundred and sixty-four, and an act amendatory of the same, approved February twentieth, eighteen hundred

and sixty-five, and also confirmed in its corporate powers under an act of the legislature of the State of Illinois, approved eighteen hundred and sixty-four, or any other bridge company organized under the laws of Missouri and Illinois, be, and the same is hereby empowered to erect, maintain and operate a bridge across the Mississippi River, between the City of Saint Louis in the State of Missouri, and the City of East Saint Louis, in the State of Illinois, subject to all the conditions contained in said act of incorporation and amendments thereto, and not inconsistent with the following terms and provisions contained in this act. And in case of any litigation arising from any obstruction or alleged obstructions to the free navigation of said waters, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches.

Question of obstruction where may be tried.

Sec. 12. *And be it further enacted*, That the bridge authorized by the preceding section to be built shall not be a suspension bridge, or draw-bridge, with pivot or other form of draw, but shall be constructed with continuous or unbroken spans, and subject to these conditions: First, that the lowest part of the bridge or bottom chord shall not be less than fifty feet above the city directrix at its greatest span. Second, that it shall have at least one span five hundred feet in the clear, or two spans of three hundred and fifty feet in the clear of abutments. If the two latter spans be

Bridge to be built with unbroken spans.

Conditions, height and length of spans.

used, the one over the main steamboat channel shall be fifty feet above the city directrix, measured to the lowest part of the bridge at the centre of the span. Third, no span over the water at low-water mark shall be less than two hundred feet in the clear of abutments.

Act may be altered, etc.

Sec. 13. *And be it further enacted*, That the right to alter or amend this act, so as to prevent or remove all material obstructions to the navigation of said river by the construction of bridges, is hereby expressly reserved.

Approved, July 25, 1866.

As will be perceived, said act contains certain general provisions applicable to all the bridges referred to therein, and also contains special provisions governing certain of the bridges mentioned in the act. The general provisions found in said act and which may be deemed applicable to the Union Pacific bridge in question, are as follows:

Bridge may be built with draw or unbroken spans.

Sec. 2. *And be it further enacted*, That any bridge built under the provisions of this act may, at the option of the company building the same, be built as a drawbridge, with a pivot or other form of draw, or with unbroken or continuous spans: *Provided*, That if the said bridge shall be made with unbroken and continuous spans, it shall not be of less elevation in any case than fifty feet above extreme high-water mark, as understood at the point of location, to the bottom chord of the bridge, nor shall the

Height, if made with unbroken spans. Length of spans.

spans of said bridge be less than two hundred and fifty feet in length, and the piers of said bridge shall be parallel with the current of the river, and the main span shall be over the main channel of the river and not less than three hundred feet in length: *And, provided, also*, That if any bridge built under this act be constructed as a drawbridge, the same shall be constructed as a pivot drawbridge with a draw over the main channel of the river at an accessible and navigable point, and with spans of not less than one hundred and sixty feet in length in the clear on each side of the central or pivot pier of the draw, and the next adjoining spans to the draw shall not be less than two hundred and fifty feet; and said spans shall not be less than thirty feet above low-water mark, and not less than ten above extreme high-water mark, measuring to the bottom chord of the bridge, and the piers of said bridge shall be parallel with the current of the river: *And, provided also*, That said draw shall be opened promptly upon reasonable signal for the passage of boats, whose construction shall not be such as to admit of their passage under the permanent spans of said bridge, except when trains are passing over the same; but in no case shall unnecessary delay occur in opening the said draw during or after passage of trains.

Pivot drawbridge, with draw over main channel and spans, etc.

Draw to be opened promptly, except, etc.

Sec. 3. *And be it further enacted*, That any bridge constructed under this act, and according to its limitations, shall be a lawful structure, and shall be recognized and known as a

Bridges constructed according to this act to be lawful structures and post routes. Rates of toll.

post route; upon which, also, no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States, than the rate per mile paid for their transportation over the railroads or public highways leading to the said bridge.

Approved, July 25th, 1866.

Subsequent to the passage of said Bridge Act of 1871, and on April 24, 1871, the First Pacific Company mortgaged the bridge and its approaches as authorized by said act. The first recital in the Bridge Mortgage is as follows:

"Whereas, By an Act of Congress of the United States, approved 22nd day of February, 1871, the company is authorized to construct a bridge and railroad line across the River Missouri, *between Omaha, in the State of Nebraska, and Council Bluffs, in the State of Iowa*, and to issue such bonds, not exceeding two millions and a half of dollars, as it might deem needful for that purpose, and to secure the same by mortgage on the bridge and its approaches and appurtenances" (Record of Pleadings, p. 66).

The property covered by that mortgage is described as follows:

"All and singular, the said bridge over the River Missouri, between Omaha and Council Bluffs, and the approaches thereof, and the appurtenances belonging thereto, including all parts and portions of the said bridge *now constructed* or hereafter to be constructed, and the depots at Council Bluffs and Omaha as aforesaid, and the lines and tracks

required *to perfect the said bridge*, ITS APPROACHES AND APPURTENANCES, and to connect the same with the neighboring lines included in this conveyance as well the lines and tracks now constructed as those which may hereafter be constructed, and also all estates, terms and rights of way of the said bridge, approaches and appurtenances, as well now held by the company as to be hereafter acquired by it, and all the rights and privileges of the said company of, in or to the said bridge, approaches or appurtenances, or touching, concerning or appertaining to the maintenance, use and occupation thereof" (Record of Pleadings, p. 74).

After the consolidation the Second Pacific Company, made a Renewal Bridge Mortgage, dated October 1, 1885, in practically the same form as the original mortgage.

During the years from 1868 to 1872, the City of Omaha and the County of Douglas, Nebraska, donated to the First Pacific Company certain bonds to aid it in the construction of its bridge, approaches, depots and tracks connected therewith, and upon February 2, 1872, there was recorded a deed from one Alvin Saunders, Trustee, to the First Pacific Company, conveying certain depot property in the City of Omaha, Nebraska, which the said Saunders had held as a naked trustee for the said First Pacific Company, and these grounds described in said Saunders deed have been used as a part of the depot grounds, yards, terminal facilities and approaches, at Omaha, between the west end of the bridge and a point known as the Junction Point at or near 20th Street in the City of Omaha.

In the Saunders deed there appears what has been designated as a "Tripartite Agreement," which agreement is found in Record of Pleadings, pages 20 to 25, inclusive.

In the Saunders deed after the granting clause is found the following provision, to wit:

> "Hereby limiting the use of all said premises to the legitimate purposes of depot and transfer grounds and grounds for right of way and approaches to the said Missouri River Bridge, subject to the conditions and restrictions contained in the contract above recited, and provided further, that in case said premises, or any part thereof, be abandoned or disused or converted to any other than the uses and purposes hereinbefore limited, then the same shall revert to and become the property of the said City of Omaha" (Record of Pleadings, p. 29).

On May 1, 1890, the Second Pacific Company entered into contracts with the Chicago, Rock Island and Pacific Railway Company and the Chicago, Milwaukee and St. Paul Railway Company, for the term of 999 years, granting to said companies the use of its bridge across the Missouri River, its terminal facilities in Omaha and its tracks from Omaha to South Omaha. Subsequently the Pacific Company refused to carry out the contracts, and suits were brought by the other companies to compel specific performance thereof. Specific performance was decreed by the trial court, and on appeal to this Court the decree was affirmed (*Union P. Ry. Co. vs. Chicago, R. I. & P. Ry. Co.*, 163 U. S., 564).

Subsequently, the present Pacific Company, the

appellant herein, entered into contracts with other railway companies entering Nebraska from Council Bluffs, granting similar privileges, which contracts, however, have no bearing upon the case at bar.

The First Pacific Company built a single-track line from a point which is known as Bridge Junction, and which is about where Twentieth Street in Omaha now is, westward, and in 1871, under the Bridge Act, it completed the construction of the bridge across the Missouri River already commenced and connected the bridge with the Junction at Twentieth Street, and with the eastern terminus of the road at Council Bluffs.

Previous to the completion of the bridge the company transferred passengers and freight between Omaha and Council Bluffs, in the winter by a bridge built upon the ice, and in summer by ferry boats.

In 1883 or 1884 stock yards were established at a point upon the line of the Union Pacific road about two miles below the point known as Bridge Junction or Twentieth Street (Record, Evidence, p. 136), and around these stock yards has grown up the City of South Omaha, Nebraska, until it has become a city of some 30,000 inhabitants. Shortly after the establishment of the stock yards above described, the First Pacific Company constructed a second track from its present station in Omaha to a point adjacent to the stock-yards, and about the year 1890 this track was extended to a small town called Gilmore, which is still the end of the double track, the line beyond that being a single track road.

In 1885 or 1886 the bridge originally constructed

was torn down and a new bridge built upon the same site and a double track laid thereon.

In 1898 the First Mortgage of March 1, 1865, heretofore referred to, was foreclosed. In the foreclosure proceedings there was a contest as to the priority of the lien of that mortgage and the Bridge Mortgage of 1871, on the bridge and appurtenances, and it was decreed that the whole line of road, including the bridge in question, be sold to satisfy the First Mortgage of 1865, but saving the lien of the Bridge Mortgage upon and in respect to the premises covered by said Bridge Mortgage, and to the extent of the indebtedness thereby secured.

Union Pacific Railroad Company, appellant, became the owner of all the properties formerly belonging to the Union Pacific Railroad Company and The Union Pacific Railway Company, by purchase, under the terms and conditions of a decree in said foreclosure proceedings, made and entered in the Circuit Court of the United States in the District of Nebraska, in the case of F. Gordon Dexter and Oliver Ames Second vs. The Union Pacific Railway Company *et al.*, in which the amount due at the time of the sale was something over twenty-seven million dollars.

The mortgage covered the property involved in this suit, and appellant by reason of its purchase at said sale and the deed made in pursuance thereof became the owner of all the property described in the bill, the joint use of which appellee seeks.

Prior to the institution of this suit appellee had requested of appellant permission to use the facilities

demanded in its bill, upon certain terms and conditions, which request appellant refused.

Appellee, therefore, in this suit seeks the aid of a court of equity to compel appellant to enter into contractual relations with it, notwithstanding its unwillingness and refusal so to do.

Appellee bases its claim for this extraordinary and unusual equitable relief, and claims that it has the right to the use of these premises and terminal facilities, on the following grounds:

*First.* Under and by virtue of the terms of the contract or tripartite agreement entered into between the First Pacific Company and the City of Omaha and County of Douglas, Nebraska, referred to above, and the deed from Alvin Saunders, Trustee, to said Company, executed in accordance with said contract.

*Second.* Under and by virtue of the two Acts of Congress, approved respectively July 25, 1866 (14 Stats., 244), and February 24, 1871 (16 Stats., 430), and above referred to.

In its answer filed in this cause the appellant relied upon the following defenses:

(1) That the tripartite agreement above referred to became a part of and was merged in the Alvin Saunders, Trustee, deed.

(2) That no advantage could be taken by the appellee of the conditions found in this deed, because:

(*a*) Saunders was a naked trustee, and the City of Omaha was the real party in interest.

(*b*) This was a deed in fee to the Union Pacific Railroad Company, with a condition subsequent in

favor of the City of Omaha, which was the real party in interest.

(*c*) No one but the City of Omaha, the real party in interest, had the right to insist upon the performance of the conditions in said deed, or to enforce the penalty for failure to perform the same, and the City of Omaha was not made a party to the suit.

(*d*) That the limitations and conditions contained in the Saunders Deed were illegal and invalid, and that for this reason appellant took an estate in fee simple free from all conditions and limitations.

(3) That the City of Omaha being the real party in interest, and the party for whose benefit the contract recited in the Saunders Deed was made, appellee would only be incidentally benefited by the performance of the contract, and therefore was not entitled to maintain this suit under said contract.

(4) That neither the Act of Congress approved February 24, 1871, nor any other Act of Congress, required appellant to permit appellee to use said bridge across the Missouri River, or the terminal facilities referred to in the bill.

(5) That appellant, under the proceedings instituted to foreclose the First Mortgage of March, 1865, acquired all the properties of the original, The Union Pacific Railroad Company free and clear of any liens, charges, burdens or duties of or to the United States, or under any Act of Congress, and free and clear of any of the conditions or provisions of the Saunders Deed.

(6) That there was no equity in complainant's bill,

for no necessity existed for the use by appellee of the facilities referred to therein.

(7) That under no circumstances and in no event should appellee be entitled to the use of the facilities in question beyond Twentieth Street, in the City of Omaha, Nebraska, either under the Saunders Deed or the Acts of Congress referred to.

(8) That the appellee had no charter or corporate power or authority to acquire, hold, take, use or exercise any dominion over the properties referred to in the bill.

The issues were properly made up, the testimony taken and the case submitted to the trial court, and on the 12th day of August, 1903, a decree was made and entered in favor of appellee, which is found on page 261 of the Record of Pleadings, by the terms of which appellant was mandatorily ordered and directed to admit appellee to the full, equal and joint use of all of the properties described in the bill of complaint. The opinion of the trial court is found on page 252 of the Record of Pleadings.

Thereupon an appeal was taken to the United States Circuit Court of Appeals for the Eighth Circuit from said order and decree, and on the 29th day of February, 1904, an opinion of said court was filed affirming the opinion of the trial court (Record of Pleadings, p. 277). On the same day a decree was entered affirming the decree of the circuit court, which said decree is found on page 293 of the Record of Pleadings.

Thereupon, an appeal was taken to this Court from said order and decree.

## Description of Map.

The red line indicates the road of the Union Pacific built prior to the date of the mortgage of 1865. Under the decision of the court below, the appellee is given the use of this track through South Omaha to Gilmore, about six miles from the bridge. Gilmore is not marked on the map, but is about a mile and a half beyond and to the south of South Omaha. The tracks, passing tracks, etc., between the approaches to the bridge and the town of Gilmore amount in the aggregate to about eighty (80) miles of track, the use of which is given to appellee against the will of the appellant by the decree of the court below.

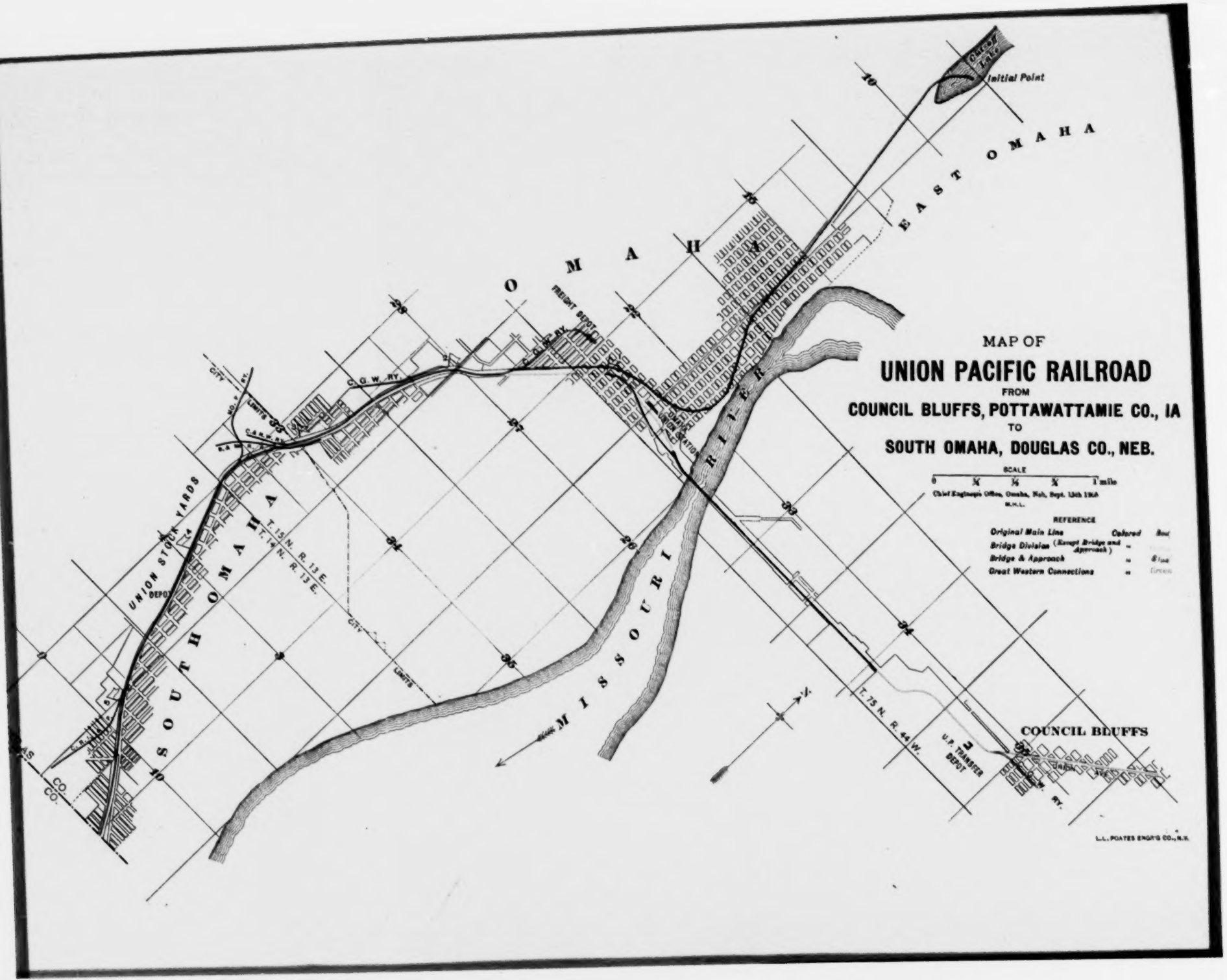
The blue line indicates the bridge and approaches.

The yellow line on the Iowa side indicates the tracks, etc., at the station at Council Bluffs.

The yellow line on the Nebraska side indicates the tracks at the station and yard between the approaches to the bridge and the junction with the main line at 20th Street.

The green line indicates the tracks owned by the appellee.

CITY
NO. LIMITS
UNION STOCK YARDS
DEPOT
SOUTH OMAHA
T. 15 N. R. 13 E.
T. 14 N. R. 13 E.
DOUGLAS
SARPY
CO.
CO.


Initial Point
EAST OMAHA
OMAHA
SOUTH OMAHA
MISSOURI RIVER
MAP OF
UNION PACIFIC RAILROAD
FROM
COUNCIL BLUFFS, POTTAWATTAMIE CO., IA
TO
SOUTH OMAHA, DOUGLAS CO., NEB.
SCALE
0 ¼ ½ ¾ 1 mile
REFERENCE
Original Main Line Colored Red
Bridge Division (Except Bridge and Approach) "
Bridge & Approach " Blue
Great Western Connections " Green
COUNCIL BLUFFS
UNION STOCK YARDS
U.P. TRANSFER DEPOT
T. 15 N. R. 13 E.
T. 14 N. R. 13 E.
T. 75 N. R. 44 W.
C. G. W. RY.
L. L. POATES ENGR'G CO., N.Y.

## Specification of Errors.

Appellant alleges that the Circuit Court of Appeals erred in the following particulars and specifies errors as follows:

I.

In affirming the decree of the court below.

II.

In not reversing the decree of the court below and remanding this cause, with directions to dismiss complainant's bill.

III.

In holding that the Union Pacific Railroad Company was required under the acts of July 1, 1862, July 2, 1864, July 25, 1866, and February 24, 1871, to permit the Mason City & Fort Dodge Railroad Company to use its bridge across the Missouri River between the cities of Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska, together with all tracks, side tracks, spur tracks, facilities, etc., and that the Mason City & Fort Dodge Railroad Company was entitled to the full, equal and joint use with other railroads of said bridge and tracks.

IV.

In holding that the Mason City & Fort Dodge Railroad Company was entitled under said acts to go over and across the bridge of the Union Pacific Railroad Company, and to use with other railroads the main and passing tracks of the appellant, located or established or to be located and established between the City of Council Bluffs, in the State of Iowa, and the City of South Omaha, in the State of Nebraska, and also the terminal facilities in said cities.

V.

In holding that the Mason City & Fort Dodge Railroad Company was entitled to the use of the tracks and terminal facilities of the Union Pacific Railroad Company beyond and west of Twentieth Street in the City of Omaha, Nebraska.

VI.

In holding that the Mason City & Fort Dodge Railroad Company possessed the same right to enforce the provisions of the act of Congress of February 24, 1871, against the Union Pacific Railroad Company, the appellant in this case, as it would have possessed against the original Congressional corporation entitled the Union Pacific Railroad Company and the consolidated corporation known as the Union Pacific Railway Company.

VII.

In holding that the appellant did not under the foreclosure of the first mortgage of March 1, 1865, acquire all of the properties of the old company, to-wit, the Union Pacific Railroad Company, a congressional corporation, free and clear of any lien, charge or duty of or to the United States of America, under any act of Congress of the United States except as specified in the decree of foreclosure entered in said cause in the Circuit Court of the United States for the District of Nebraska, July 9, 1897.

VIII.

In holding that the Mason City & Fort Dodge Railroad Company was entitled to use, or to the right to use, and occupy any of the premises of the Union Pacific Railroad Company upon the terms of the contracts, or any of them, between the said Union Pacific Railroad Company and other railroad companies.

IX.

In holding that any necessity existed for the use by the Mason City & Fort Dodge Railroad Company of the bridge across the Missouri River and the other properties of the Union Pacific Railroad Company for an entrance to the City of Omaha, Nebraska.

X.

In refusing to hold that the Mason City & Fort Dodge Railroad Company had no corporate power or authority to use or exercise any dominion over property in the State of Nebraska, and, therefore, had no power or authority or right to use any of the property in the State of Nebraska of the Union Pacific Railroad Company.

XI.

In refusing to hold that no advantage could be taken by the Mason City & Fort Dodge Railroad Company of the conditions found in the Alvin Saunders deed.

XII.

In refusing to hold that the limitations and reservations in the Alvin Saunders deed to the Union Pacific Railroad Company, the original Congressional corporation, were invalid and not binding upon the appellant.

XIII.

In refusing to hold that the City of Omaha was the real party in interest for whose benefit the contract recited in the Alvin Saunders deed was made; that the Mason City & Fort Dodge Railroad Company would only be incidentally benefited by the enforcement of said contract; and that, therefore, it is not entitled to maintain this suit under said contract.

# ARGUMENT.

## FIRST POINT.

**No authority was conferred by the acts of Congress of July 1, 1862, July 2, 1864, July 25, 1866, and February 24, 1871, upon the Mason City & Fort Dodge Railroad Company to use the Missouri River bridge and the tracks of the appellant Union Pacific Railroad Company, and under no aspect of this case can this question, or any of the questions involved herein, be deemed to be disposed of by reason of the decision of this Court in the case of Union Pacific Ry. Co. v. Chicago, Rock Island & Pacific Ry. Co., 163 U. S., 564.**

For the first time in the history of this litigation we have reached a court where the questions involved can be heard upon their merits. Both in the Circuit Court and the Circuit Court of Appeals we have been met with the statement that those courts are precluded from an investigation of the questions involved by reason of the opinion of this Court in the case of the *Union Pacific Railway Co. vs. Chicago, Rock Island & Pacific Railway Co.*, 163 U. S., 564.

The single question in the Rock Island case was whether the Union Pacific could be compelled to perform a contract which it had voluntarily entered into, permitting the Rock Island to use its bridge and tracks.

The single question in the case at bar is whether the Union Pacific can be compelled to make such a contract against its will with the Mason City Company.

It is not clear how the decision in the former case can be considered as controlling in this case, when the

question presented in the Rock Island case is of such an entirely different character from that which arises in the present controversy.

SANBORN, Circuit Judge, delivering the opinion of the Circuit Court of Appeals, said (Record, p. 286):

> "The considerations to which reference has now been made have forced our minds irresistibly to the conclusion that the question whether or not the Pacific Railroad Acts relating to the Omaha bridge imposed upon the Union Pacific Railway Company the duty to grant to the Rock Island Company and to other companies like the respondent, which are similarly situated, the joint and equal use of its transportation facilities described in the decree below, not only between Council Bluffs, and Omaha, but also between Omaha and South Omaha, has been conclusively determined by the decision of the Supreme Court in the Rock Island case, and that it is not open to our consideration or decision. The clear declaration of the opinion of the Supreme Court upon this question, in the Rock Island case, does not appear to us to be the mere *obiter dictum* of the Chief Justice who wrote it, and even if we are in error in this conclusion, the declaration of that fact and the reversal of the decision there expressed will come with much better grace from the Court which delivered the opinion, to which this case is removable by appeal, than from an inferior court, which ought not to presume even when the answer to the question is doubtful, that the court whose decisions advise and control its determinations has unnecessarily or unadvisedly determined a question which was not lawfully presented for its consideration."

Also at page 292:

> "The result of the whole matter is that under the opinion of the Supreme Court in Union Pacific Railway Co. vs. Chicago, etc., Ry. Co., 163 U. S., 564, 586, to the effect that the appellant in that case owed to the Rock Island Company the duty, under the Pacific Railroad acts relating to the Omaha bridge, to permit it to use the very facilities in question in this case, an opinion which this court, for reasons which have been fully stated, does not feel at liberty to criticise or disregard, there is no escape from the conclusion that the appellee is entitled to the relief granted to it by the decree below."

It, therefore, becomes necessary at the outset of this discussion to consider to what extent the opinion in the Rock Island case should govern in the case at bar.

### The Opinion in the Rock Island Case.

This was a case in equity brought by the Rock Island and Milwaukee companies against the Second Pacific Company to compel the specific performance of two contracts, dated May 1, 1890, and April 30, 1890, respectively. In the pleadings there is no reference whatever to the Bridge Act of 1871 or the act referred to therein of 1866. The bill of complaint is based upon the contract between the parties and no claim whatever is made under the Acts of Congress of 1871 and 1866. The answer set up that such contract was *ultra vires* and would impair the ability of the Union Pacific to discharge its duty to the public. The ordinary general replication to the answer was filed by the complainant. It will be seen that there is no suggestion whatever in

the pleadings of the questions presented in the case at bar. The case was first tried before Mr. Justice BREWER, and is found reported in 47 Fed. Rep., p. 15.

Summing up the case as presented to him, Mr. Justice BREWER says (p. 17):

> "Four questions have been presented, and argued with distinguished ability. They are—first, was the instrument, as thus signed and attested, so authorized and executed as to become and be a contract of the corporations? Second, if it was so authorized and executed, was it *ultra vires?* Third, if not *ultra vires*, is it a contract of which a court of equity may compel specific performance, and, fourth, if it may, ought specific performance to be decreed?"

He then proceeds to decide the case, and no other questions are hinted at or discussed. There was no construction of any statutes asked or urged at the hearing, nor is there the slightest hint that any duty other than the obligation of fulfilling the contract rested upon the Pacific Company.

From this decision an appeal was taken to the Circuit Court of Appeals for the Eighth Circuit, the opinion being found in 51 Fed. Rep., 309. In this case SANBORN, Chief Justice, reading the opinion, affirms the finding of Justice BREWER, and going a step further, in discussing the purpose and policy of Congress, says (p. 323):

> "An examination of these statutes clearly shows that the purpose and policy of the Congress has been constantly to promote, and often to require, the formation and operation of continuous lines of transportation; that *almost without* exception, it

has authorized and *generally* has required, the owners of railroad bridges built under its authority to allow the use of their bridges and tracks for the passage of trains of connecting companies. It is seen that the Bridge Act of 1866, by which the Pacific Company, so far as the same was applicable, was 'empowered, governed and limited,' for the use and protection of its Omaha bridge, was an act whose restrictions and conditions have been made applicable to at least eight bridges; and that the expressed purpose of the Act of February 24, 1871, was 'for the more perfect connection of any railroads that are or shall be constructed to the Missouri river.'"

And so, not holding that the Act of 1871 imposed the obligation, but "reading the charter of the company in the light of the general legislation," referred to in the opinion, the Court declares that "we are constrained to hold that the Union Pacific Railway Company was thereby *fairly empowered to make this contract.*"

From that court an appeal was taken to this Court, and here the rights of the Rock Island and Milwaukee companies, under the contracts, were finally established, this Court holding that the Pacific Company had the right and authority to make the contracts, and using the following language (163 U. S., 564, 585):

"We think that it would be carrying the doctrine of *ultra vires* much too far to deny absolutely the competency of a railroad company, being a public highway, whose use is common to all citizens, to contract to give another running rights over its tracks *without express statutory authority*, AND that, under proper circumstances, such a contract may well be held within its implied powers."

This fully and finally disposed of the contention raised by the Pacific Company, and the case was at an end. But in the opinion there was added the following paragraph, which has proved a stumbling block to the hearing of the case at bar upon its merits (pp. 585, 586):

> "But the determination of the existence of the power to grant running rights in this instance does not rest on these considerations alone. For the provisions of the Pacific Railroad acts relating to the bridge over the Missouri river, its construction and operation, imposed on the Pacific company the duty of permitting the Rock Island company to run its engines, cars and trains over the bridge and the tracks between Council Bluffs and Omaha, and we think that South Omaha was included."

We insist that an examination of the record will show conclusively that this statement and the argument in support thereof were not authoritative or binding on the Court, and must be treated as *obiter dicta.*

Chief Justice MARSHALL, in *Cohens vs. Virginia*, 6 Wheat., 264, said (p. 399):

> "It is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the

case decided, but their possible bearing on all other cases is seldom completely investigated."

In *Harriman vs. Northern Securities Co.*, 197 U. S., 244, 291, it was held by this Court to be the settled rule,—

> "that general expressions in an opinion, which are not essential to dispose of a case, are not permitted to control the judgment in subsequent suits."

Passing upon these statements in this opinion, when this case was submitted to Judge MUNGER, the latter said in his opinion, found on page 257 of the Record:

> "The question as to whether the Union Pacific could be required against its will to enter into any character of a contract with another railroad company for the use of the bridge and tracks was not before the court in the Rock Island case. It was not necessary to be considered for a correct determination of the question submitted, and hence, the expression before quoted in the opinion of the Chief Justice, that the bridge act imposed upon the Union Pacific Company the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and tracks between Council Bluffs and South Omaha, is not authority but *dicta*, which while it should be respected, is not to control the judgment in this case."

As heretofore suggested, any reference to the Act of 1871 was entirely unnecessary, as the court had already determined the controversy and found that the Pacific Company had the implied power under its charter to make the contracts which were the basis of the suit. The writer's reference to the Act of 1871 was simply an attempt, suggested probably by Judge SANBORN'S

language heretofore quoted, to show that therein the Union Pacific was granted express statutory authority to make the contract in question, but it is quite apparent that if the company had the implied power, express statutory authority was unnecessary, and the discussion on that point must be treated as *obiter dicta*, and not binding on the court as a whole, but simply the private opinion of the Justice delivering the opinion. In addition this branch of the matter was touched on but lightly by both the court and the attorneys in their arguments. The court devoted but few pages to the discussion of it, and the attorneys but little more. On reading the statement in the opinion of this Court in the Rock Island case that the matters provided for in the second and third sections of the Act of 1866 were otherwise fully covered in the Pacific Railroad Acts, we carefully examined the briefs submitted to the Court in that case to find if the points we urged were presented to the Court in connection with the construction of the Act of 1871, and we find that they were not urged by counsel or considered by the Court.

This is all the more apparent when we consider the dissenting opinion filed by Justices SHIRAS and GRAY, and found on page 604 of the Rock Island case. Had the question of the duty and obligation of the Pacific Company to turn over the use of the tracks, depots and bridge to another company been discussed or considered by the Court, and had it been decided by the Court that this duty and obligation was imposed by this act, then there would have been absolutely no basis for the dissenting opinion, and had this matter been in dispute by the Court, and the majority of the Court been against

Justices SHIRAS and GRAY, then of necessity their first endeavor in the dissenting opinion must have been to show that no such duty and obligation rested upon the company under the Act of 1871. On the contrary, however, we find this language in the dissenting opinion (pp. 606, 607):

> "The doctrine of those cases may be sufficiently expressed by the following paragraph taken from the opinion of Mr. Justice MILLER in the case of Pennsylvania Railroad vs. St. Louis, &c., Railroad, 118 U. S., 309:
>
> 'We think it may be stated as the just result of these cases and on sound principle that, unless *specially authorized by its charter or aided by some other legislative action*, a railroad company cannot, by lease or any other contract, turn over to another company, for a long period of time, its road and all its appurtenances, the use of its franchises, and the exercise of its powers, nor can any other railroad company, without similar authority, make a contract to receive and operate such road, franchises and property of the first corporation, and that such a contract is not among the ordinary powers of a railroad company, and is not to be presumed from the usual grant of powers in a railroad charter.' To which may be added the following observations of Mr. Justice GRAY, in the very recent case of Central Transportation Co. vs. Pullman's Car Co., 139 U. S., 48: 'The clear result of these decisions may be summed up thus: The charter of a corporation read in the light of any general laws which are applicable is the measure of its powers, and the enumeration of those powers implies the exclusion of all others not fairly incidental. All contracts made by a corporation beyond the scope of those

powers are unlawful and void, and no action can be maintained upon them in the courts, and this upon three distinct grounds: the obligation of every one contracting with a corporation to take notice of the legal limits of its powers; the interest of the stockholders not to be subjected to risks which they have never undertaken; and above all the interest of the public that the corporation shall not transcend the powers conferred upon it by law."

This shows most conclusively that the Court never found or determined that this duty or obligation "*was specially authorized by its charter or aided by other legislative action.*"

The peculiar circumstances under which the Act of 1871 was passed was not brought to the Court's attention, nor was the point pressed on them that at that time it was strongly contended that the bridge would not constitute a part of the Union Pacific Railroad when completed, and therefore not subject to be used by the United States Government as a post route. If this point had been urged upon the Court, and this reason presented why it would be expedient for Congress, out of abundant caution, to incorporate in the Act of 1871 a reference to the Act of 1866, so as to make certain, irrespective of the final result of the contention as to where the eastern terminus of the Union Pacific was, that the bridge would be available to the Government, no doubt it would have been very apparent to the Court that the reference was intended to cover Sections 2 and 3 and was a very reasonable and natural precaution.

It was necessary in order to have any basis for the statement that it was the duty of the Union Pacific to permit the Rock Island Company to cross the bridge

under the Acts of the Congress of the United States, to show that the reference in the Act of 1871 to the Act of 1866 was not to the general provisions, to wit, Sections 2 and 3. The opinion endeavored to eliminate these sections by saying that the matters embodied therein were fully covered by the Pacific Railroad Acts of 1862 and 1864. A careful examination will show that this is not so.

There are three things covered by Sections 2 and 3 of the Act of 1866:

(1) In connection with the use of the bridges when built as drawbridges.

(2) The protection of the bridges, *i. e.*, that they should be lawful structures.

(3) The *use* of the bridges by the Government—that they should be *post routes.*

There was nothing in the Pacific Railroad Acts relating to the use of the bridge built as a drawbridge, so that this was not fully covered by said Acts, and therefore reference was made to this provision specifying the use of the bridge in case it was built as a drawbridge.

It was provided in the third section, "That any bridge constructed under this Act and according to its limitations, shall be a lawful structure and shall be recognized and known as a post route."

There was no provision in the Pacific Railroad laws declaring that the bridge should be a lawful structure and that it should be a post route. Congress therefore, by way of a reasonable and safe precaution, incorporated these provisions in the Act of 1866 by reference into the Act of 1871.

## Post Routes.

The important provision embodied in the third section of the Act of 1866 was that the bridges should be recognized and known as Post Routes. There is no provision in the Pacific Railroad Acts fully, specifically and clearly declaring that the Union Pacific bridge across the Missouri River should be a post route and open to the use of the Government of the United States as such.

It is true that since the decision in the case of *Union Pacific R. R. Co. vs. Hall*, 91 U. S. 343 (decided in 1875), it must be regarded as definitely settled that the bridge across the Missouri River is a part of the Union Pacific Railroad, and built under the original Acts incorporating the company in 1862 and 1864. But before the decision in that case it was a mooted and vexed question. It was contended by many able lawyers that the eastern terminus of the Union Pacific Railroad was at Omaha, Nebraska, and that the bridge was no part of the line and this position was sustained by some very cogent reasoning. In fact, one of the Justices of the Supreme Court of the United States dissented from the majority opinion in the Hall case, *supra*, holding that the eastern terminus of the Union Pacific was at Omaha, Nebraska, and the bridge across the Missouri was no part of the line as originally authorized by Congress.

Mr. Justice Bradley dissenting, said, at page 356:

> "I am obliged to dissent from the judgment of the Court in this case. The Missouri River is, by common acceptation, the western boundary of Iowa;

and the fair construction of the charter of the Union Pacific Railroad Company, which adopts that boundary as its eastern terminus, is, *that the road was to extend from the Missouri River westwardly.*"

In the majority opinion of the Court, delivered by Justice STRONG, the following occurs at page 344:

"The contest in the case does not relate to the existence of this duty; it is principally over the question, *whether the railroad bridge over the Missouri River*, between Omaha in Nebraska and Council Bluffs in Iowa, *is a part of the Union Pacific Railroad; for if it is, there* can be no doubt that the company are required by law to use it in connection with, and as a part of, their entire road, operating all parts together as a continuous line."

It will thus be seen that within a few years of the passage of the Act of 1871, there was a case in the Supreme Court of the United States involving the question as to whether this very bridge was a part of the Union Pacific Railroad at all; that it was vigorously contended by men eminent in the legal profession and supported by able argument, that the bridge was not a part of the Union Pacific Railroad, but separate and distinct from it and not bound by the provisions in the Pacific Railroad Acts of 1862 and 1864, and that one of the Justices of the Supreme Court of the United States held that this contention was well founded in law.

We hardly think, therefore, it can be said, that the use of the bridge as a "post route" was as fully covered by the Pacific Railroad Acts of 1862 and 1864, as might be deemed necessary. It may fairly be said that the

question as to whether the Missouri River bridge, when completed, would be a part of the Union Pacific Railroad, and amenable, therefore, to the provisions of the Pacific Railroad Acts with reference to transportation of the mails, etc., was, in 1871, a fairly debatable one. Now let us see what the position of the Government would be in reference to said bridge, if the contention of the Union Pacific and the holding of Justice BRADLEY was a correct one, and the bridge was not a part of the Union Pacific Railroad.

If it was not a part of the Union Pacific Railroad, and the eastern terminus of the Union Pacific was at Omaha, then of course none of the provisions of the Pacific Railroad Acts of 1862 and 1864 would apply and the Union Pacific would be under no obligations to the United States Government with reference to transporting troops or mails or in any other way. The Government would be absolutely without any claim on the bridge.

With matters in this shape and with this possible or probable contention in view, would it not be a very natural thing for Congress to incorporate in the Act of 1871 some provision so as to remove all doubt on this point and render certain that the United States should have its troops and mails carried over the bridge? This would naturally bring to mind the Act of 1866, in which Congress had incorporated a general provision that all bridges therein named should be "lawful structures, and recognized and known as post routes." The provision that the bridge was to be a "post route," was a provision with reference to the *use* of it, and the

provision that it was to be a "lawful structure" was intended for its *protection* and hence a reference to the Act of 1866, in general terms referring to the clauses bearing on use and protection would be sufficient. So Congress provided that "for the *use and protection* of said bridge and property" the Union Pacific should be empowered, governed and limited by the provisions of the Act of 1866, "so far as the same is applicable" to the use and protection thereof, thereby settling for all time any dispute as to the right of the United States Government to have its mails and troops carried thereover, irrespective of the question whether the bridge was a part of the Union Pacific Railroad or not.

Another consideration, which shows conclusively that Congress, when passing the Bridge Mortgage Act of 1871, had in mind the much vexed question as to whether the bridge was a part of the Union Pacific Railroad and was thus amenable to the provisions of the Pacific Railroad Acts of 1862 and 1864, is this. Congress was very careful to incorporate into the Act of 1871 the following provision:

> "And provided, That nothing in this Act shall be so construed as to *change the eastern terminus* of the Union Pacific Railroad from the place where it is now fixed under existing laws nor to *release said Union Pacific Railroad Company, or its successors, from its obligations as established by existing laws.*"

Congress must necessarily have had under consideration at that time this question, which was afterwards so vigorously fought through the courts to the Supreme Court of the United States, and where one member held

that the bridge was not a part of the Union Pacific Railroad. If it had not considered this question, it would never have put into the Act the provisions above quoted. It was to guard against that contingency and that claim that those provisions were put in, and even as against those direct provisions, as above stated, one member of the Supreme Court held that the bridge was not built under the provisions of the Pacific Railroad Acts of 1862 and 1864, but under authority of the Act of 1871, and that it was not a part of the Union Pacific Railroad. Nothing could show more plainly that Congress had the question referred to under consideration, and that it was for the sake of abundant precaution and to guard and protect the interests of the United States Government in the use of the bridge that the reference was made to the Act of 1866.

Such a burden as complainant claims Congress intended to place upon this bridge by the Act of 1871, in effect wresting the control of its bridge from the Union Pacific and making it subject to the use of all other railroads, is hardly to be placed thereon by vague inference and conjecture. If Congress intended to place such a burden on the bridge and to that extent greatly depreciate its earning capacity, a few plain and unambiguous words would have been sufficient to accomplish its purpose.

Suppose in the Act of 1866 some of the bridges were specifically made open to the use of railroad companies, as they were, but that as to the others, as, for instance, the St. Louis bridge, it was specifically declared that they were not so limited, instead of, as was done,

not limiting them by making no reference to the limitation either way. Could it then be claimed that a reference in general terms to the provisions of that Act was intended to refer to the clause limiting the use of the bridge to all railroads rather than the clause specifically stating that it was not so limited? We think that under no correct rule of construction could this be held. We cannot see that a different rule of construction could apply where some of the bridges were so limited by direct words and the others were not limited by omitting all words of limitation.

The opinion in the case of *Union Pacific Ry. Co. vs. C., R. I. & P. Ry. Co., supra*, says (p. 586):

> "The original charter of 1862 required the construction of the Pacific road from the east bank of the river, and so impliedly authorized the company to bridge it, and the amendatory Act of 1864 expressly gave the corporation authority 'to construct bridges over said Missouri River.' The bridge contemplated was for the company's use as a part of its road, *and no provision was made for other roads or other business*, nor were any special means provided for the construction of the bridge."

The object of the Act of 1871 was not to restrict the powers of the Union Pacific Company, but to give it additional powers. The opinion would read into that Act a contraction of its powers, rather than an extension thereof, for it says distinctly, as quoted above, that in the original grant to the company of its authority to build the bridge, "no provision was made for other roads or other business." We cannot believe this was the intention of Congress.

However, this language, which we have been discussing does not construe the Act of 1871 as imposing this duty on the Pacific Company, but rather uses it in aid of the argument that the language being such as it is in the Act, it would be an additional reason for holding that the power existed in the Union Pacific Company to make a contract allowing another road to use its bridge. It is, however, an entirely different construction from the one intended by the Court in the Rock Island case, that the appellee is attempting to read into the case at bar. If the majority of the Court meant what the appellee claims it meant, then the dissenting opinion of Justices SHIRAS and GRAY would be absolutely without foundation and their argument without weight.

The opinion seems to emphasize the phrase in the Bridge Mortgage Act of 1871, "for the more perfect connection of any railroads, etc.," saying "the common object of both these Acts plainly was the more perfect connection of roads running to the bridges on either side of the river." It also quotes from the Act approved June 15, 1866, in which authority is given to railroads "to connect with roads of other states so as to form continuous lines." It then states (p. 589):

> "It is impossible for us to ignore the great policy in favor of continuous lines thus declared by Congress, and that it is in effectuation of that policy that such business arrangements as will make such connections effective are made."

We may grant all this, and admit that Congress desired to make "more perfect connections" between

railroads so as to form "continuous lines" for convenience in transportation, but we cannot admit, in order to make more perfect connections between railroads so as to form continuous lines, that necessarily any railroad must have the power to run its trains and engines over the tracks and bridges of any other. If one railroad makes a physical connection with another by both lines running into the one depot, that makes a continuous line within the meaning of the Act of Congress above referred to. It does not necessarily follow that the first road must have the use of the second road's tracks. If the roads wish, they can, as it is usually done, make an amicable arrangement by which freight in carload lots may be delivered to the connecting carrier and by it carried along on its journey without the necessity of transferring to the second company's freight cars. In the same way sleeping cars are run on different roads clear across the continent. That is what is meant by Congress by the use of the term "continuous line" and also "more perfect connection." So in the case of a bridge. It certainly makes a better connection to use a bridge than a ferry boat, and that is what is meant by the language of the Act of 1871. It cannot be distorted into meaning that "more perfect connection" could not be had without the joint use of the bridge by all railroads desiring to use it. In the opinion in the Rock Island case at p. 588 a quotation is made from the opinion of Justice STRONG, in the case of *Union Pacific R. Co. vs. Hall*, 91 U. S., 343, 346, as follows:

> "From it may reasonably be inferred that the purpose of Congress was to provide for connections

of the branches of the main line of the Union Pacific road with railroads running through the states on the east of the territory, and to provide for those connections *within those States, at points at or near their western boundaries.*"

This language is quoted as supporting the conclusion that Congress intended that railroads running through the states on the east of the Territory (Nebraska), should have the right to cross the Union Pacific bridge, and thus make a virtual connection with the Union Pacific at Omaha, Nebraska. But we think the language of Justice STRONG quoted means just the opposite. He says distinctly that it was the purpose of Congress to provide for connections with the branches of the Union Pacific "within those states at points at or near their *western boundaries*". That is, in case of a railroad running through the State of Iowa, to affect a connection with the Union Pacific, such connection would be had at a point, at or near the *western boundary* of the *State of Iowa.* The fair effect of Justice STRONG'S language is that it was the intention of Congress, in passing the Pacific Railroad Acts, that roads from the east should connect with the Union Pacific at Council Bluffs, the point nearest the western boundary of the State of Iowa. There is certainly nothing in it indicating that Congress intended the Union Pacific bridge should be open to the use of other railroads.

We insist that the phrase in the Act of 1871,

"for the use and protection of said bridge and property, the Union Pacific Railroad Company shall be empowered, governed, and limited by

> the provisions of the act entitled 'An Act to authorize the construction of certain bridges, and to establish them as post roads', approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto",

refers only to such general provisions as cover all the bridges referred to in the Act of 1866, and not to specific clauses, which apply only to the specific bridge which is referred to in the different sections. For instance, Section 1 refers to the bridge across the Mississippi River at Quincy, Illinois. There is a special provision in that section requiring that when that bridge is constructed "all trains of all roads terminating at said river, at or opposite said point, shall be allowed to use said bridge for reasonable compensation to be made to the owners of said bridge." Now, if this specific provision does not refer to this bridge alone, then we must construe into the Act of 1871 the whole provision, and under that provision only, such railroads would be allowed to use the Pacific Company's bridge as terminate at the Mississippi River, at or opposite Quincy, Illinois, for it certainly cannot be contended in argument that specific words can be picked out and applied to the Pacific bridge and that other words in the same sentence can be thrown aside and disregarded.

So we believe that a restriction which would compel the owners of the bridge at Quincy, Illinois, to allow railroads terminating at Quincy to cross the same, would not be applicable to a bridge across the Missouri River at a point hundreds of miles away from the terminus of the roads referred to in the Quincy section.

The fact is, that in endeavoring to extend to the Union Pacific Company additional powers to assist it in floating its bridge bonds, the legislators were attempting to bring to its aid every provision which had been passed which might be of value to it, and therefore referred back to the Act of 1866 and incorporated in the Act of 1871, by that reference all provisions which would be of benefit to the Union Pacific Company, and also provisions which would be beneficial to the government in the matter of carrying mails and troops. But now appellee wishes to take advantage of that situation and read into the Act a construction which would make the reference unfavorable to the best interest of the company, rather than favorable, and take away from the Union Pacific Company all power to control its bridge and make its own contracts with reference to the crossing of the same.

The mere fact that the Pacific Company had the right to say to any railroad company that it could not make use of the Pacific Company's bridge unless it was willing to accept whatever terms said Pacific Company might dictate, would render the Union Pacific bridge, and property as valuable as was the St. Louis bridge, referred to in Sections 11 and 12 of the Act of 1866, which was not burdened with the conditions of use by any railroad, and by reason thereof, the owners of that bridge were able to arrange favorable terms with all roads desiring to enter the City of St. Louis over that bridge.

The intention of the Government in aiding the building of the Pacific Railroad was not, as complainant would have us understand, for the purpose of having

the country traversed by a network of railroads, but for the purpose of establishing a highway between the Missouri River and the Pacific Coast. This was a great undertaking and the idea of other roads going through was probably never in the contemplation of the legislators at the time of the passing of the Pacific enabling acts, for if such an idea had been present, no such inducements would have been offered to the company to put it through and build it.

Referring again to the case of *Union Pacific R. R. Co. vs. Hall*, 91 U. S. 343, we quote as follows from the opinion (pp. 352, 353):

> "It is a railroad bridge, a continuation of the line west of the river; and it connects the road with its required eastern terminus. * * *
>
> "To hold that the bridge is not a part of the road would defeat the plain object Congress had in view in 1862 and 1864,—a continuous line for *connection with the Iowa roads.* It would be allowing the *connection to be made in Nebraska*, instead of on the *western boundary of Iowa*, when the Act of 1871 expressly declared that nothing therein should be so construed as to change the eastern terminus of the Union Pacific Railroad from the place where it was then fixed by existing laws."

We think that this language plainly shows that it was the opinion of Justice Strong at least that the "more perfect connection" of the Iowa roads was intended by Congress to be on the Iowa side of the river, and that Congress had no idea, by the use of that phrase in the Act of 1871, that the Iowa road should be allowed to use the bridge and cross over to Nebraska and there

make connections with the Union Pacific, and that a "more perfect connection" by no means meant the use of the bridge by the Iowa roads.

Here was a road with its eastern terminus established by law at Council Bluffs, connecting with Iowa railways there, with a bridge across the river started, but without funds to complete the building of the same. Connections were made with these roads by the Pacific Company in winter over the ice and in summer on ferry boats. When a bill was passed to secure funds to complete this bridge it was natural for the preamble to recite:

> "For the more perfect connection of any railroads that are or shall be constructed to the Missouri river;" [no more ice bridges or ferry boats, but a perfect connection by means of a bridge.]

This brings us to a consideration of the Act of 1871.

## The Act of 1871.

The Act of February 24th, 1871, was the bridge bonding act. It was not passed for the purpose of granting to the Union Pacific Railroad Company authority to construct a bridge across the Missouri River, but simply and solely for the purpose of enabling the company to raise funds wherewith to build the bridge. The authority to build the bridge had theretofore been granted to the Union Pacific Railroad Company by the Acts of July 1st, 1862, and July 2d, 1864.

Referring to the original charter of the company, the Act of July 1, 1862 (12 Stat., 489), and the various acts amendatory thereto, it will be found, by Section 14

of said act, that the Union Pacific Railroad Company was authorized and required to construct a line of railroad and telegraph from a point on the western boundary of the State of Iowa westward. In the act of July 2, 1864 (13 Stat., 356), in Section 9 thereof, there is given special authority to the Union Pacific Railroad Company to construct its bridge over the Missouri River, as well as any other rivers necessary in the construction of its road; said Section 9 is as follows:

> "Sec. 9. *And be it further enacted*, that to enable any one of said corporations to make convenient and necessary connections with other roads, it is hereby authorized to establish and maintain all necessary ferries upon and across the Missouri River and other rivers which its road may pass in its course; and authority is hereby given said corporation to construct bridges over said Missouri River and all other rivers for the convenience of said road."

The charter of the Union Pacific Railroad Company expressly required the company to operate its whole line of railroad, including the bridge, as one continuous line. Section 12 of Act of July 1, 1862 (12 Stat., 489), provides:

> "The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel and transportation, so far as the public and government are concerned, as one connected, continuous line."

Also Section 15 of the Act of July 2, 1864 (13 Stat., 356), provides:

"*And be it further enacted*, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and government are concerned, as one continuous line."

It has been distinctly held by the Court that the authority to build the bridge across the Missouri River was expressly conferred by said Acts.

"It was commenced in 1869 under the acts of 1862 and 1864. These acts were the only authority the company had at the time of its commencement for building it. It is a railroad bridge, a continuation of the line west of the river; and it connects the road with its required eastern terminus. The acts chartering the company manifest no intention to distinguish between the bridge over the Missouri River and other bridges on the line of their road. If it is not a part of their road, neither is any bridge between the Missouri River and the western boundary of Nevada; for the power to build all bridges was given in the same words."

*Union Pacific R. R. Co. vs. Hall*, 91 U. S., 352.

"The Omaha bridge of the Union Pacific Railway Company was not constructed under the act of 1866. It was constructed under the original acts incorporating the company—the acts of July 1, 1862, and of July 2, 1864, and the act of February 24, 1871; and the reference in the last named act to the act of 1866, was for the purpose of extending the provisions of the latter, so far as

necessary to confer additional powers upon the railway company for the use and protection of the bridge."

*Union Pacific Ry. Co. vs. United States*, 117 U. S., 355, 361.

It is thus clearly established that the authority to build the bridge across the Missouri River was conferred by the acts of 1862 and 1864. The construction of the bridge had been commenced in 1869. The company was in financial difficulty and unable to complete the same, and appealed to Congress for legislation to aid it in securing the necessary funds.

General Dodge testified that the company, being without funds to build the bridge, requested him to go to Washington with others, which he did, and he secured the passage of the Act of 1871. It was not the intention of Congress to put any burdens upon this bridge of any kind or character. It intended to make the measure as attractive as possible and to do everything in its power to aid the company in the sale of these bonds, from the proceeds of which it could construct the bridge. The act was a binding act for the purpose of raising money to complete a bridge already authorized by Congress and not a law giving the railroad the right to build a bridge upon certain terms and conditions.

In the preamble occurs the following:

"That for the more perfect connection of any railroads that are or shall be constructed to the Missouri River, at or near Council Bluffs, Iowa, and Omaha, Nebraska the Union Pacific Railroad Company, be and it is hereby, authorized to issue such bonds," etc.

The only legitimate construction that can be given to this language, taking into consideration the fact that this act was passed for the purpose of financing the bridge and raising money, would be that all roads constructed to the Missouri River, at or near Council Bluffs, Iowa, would transfer their freight and passengers to the Union Pacific Railroad Company at said point, and that the Union Pacific would haul the same across the river; that all railroads that should be constructed to the Missouri River at or near Omaha, Nebraska, would turn over their freight and passengers to the Union Pacific at Omaha, and the Union Pacific would transfer the said freight and passengers across the bridge and deliver them to the connecting lines at Council Bluffs. This would make a paying division of that part of the road, and investors would see that the earning capacity of the bridge would be such that the bonds issued would be valuable property, and that therefore a market would easily be found for their sale.

Again, the Supreme Court of the United States has so construed this measure, for in the Hall case, *supra*, it says:

> "There is nothing either in the act of 1862 or 1864, or in that of February 24, 1871, which empowers them to build more than one bridge over the Missouri for the Iowa branch; and the latter act contains an implied recognition of their right under the former acts to build their bridge on its present location. There is no intimation in it of a distinct bridge franchise. It grants no power to build a bridge. *Its main purpose* manifestly was to give the company *additional means* and privileges

for the *completion of a structure already authorized*, not to enable them to construct a new and independent road."

*Union Pacific R. R. Co. vs. Hall*, 91 U. S., 343, 353.

Having thus clearly established, first, that the authority to build the bridge was conferred by the Acts of 1862 and 1864, and, second, that the Act of 1871 was simply a financial measure, let us now analyze the Act of 1871 and ascertain exactly what was authorized in express terms by said act, and what conditions, if any, were imposed either by express terms or by reference or implication.

(*a*) In that act authority is given the Union Pacific to issue bonds and secure the same by mortgage on the bridge, approaches and appurtenances.

(*b*) The bridge is to be so constructed as to provide for the passage of vehicles.

(*c*) The company is authorized to levy and collect tolls and charges.

(*d*) "For the use and protection of said bridge and property, the Union Pacific Railway Company shall be empowered, governed and limited by the provisions of the act entitled 'An Act to authorize the construction of certain bridges and to establish them as post roads,' approved July 5, 1866, so far as the same is applicable thereto."

(*e*) That nothing in the act shall be construed to change the eastern terminus of the Union Pacific from the place where it is now fixed under existing laws, nor

to release the Union Pacific from its obligations as established by existing laws.

(*f*) Congress has the power to regulate said bridge as to rates for transportation of freights and passengers.

(*g*) The amount of the bond issue shall not exceed two and a half million dollars.

(*h*) If constructed as a drawbridge, the same shall be constructed with spans not less than 200 feet in length in the clear, etc.

*There is no command that the bridge when constructed and in operation shall be open to the use of other railroads.*

It is appellee's contention (1) that by the language in the preamble "for the more perfect connection of any railroads" Congress intended that the bridge should be open to the use of other railroads, and (2) that by the terms of the Act of 1866, to which reference is made in the Act of 1871, it was the duty of the Union Pacific to permit other railroads to cross the bridge and use the terminal facilities.

The first contention that, by the use of the words "for the more perfect connection of any railroads" Congress intended that the bridge should be open to the use of any railroad desiring to use the same, is wholly unreasonable and would take from these words their ordinary and proper meaning and significance.

Prior to the construction of the bridge the means of crossing the river was by ferry in the summer and by ice bridges in the winter. It was necessary to have a "more perfect connection" than by these rude methods. A bridge would make a "more perfect connection" and

would aid the Union Pacific in making a more perfect connection with the road terminating on the eastern bank of the Missouri. Congress had not in contemplation the aiding of other roads and did not confer this power to borrow money on the Union Pacific in order that other roads should have the use of the bridge to make a better connection with the Union Pacific. Counsel might just as well claim that under this language any road could have forced the Union Pacific to take its trains across on the ferry and ice bridges. Of course, if a bridge was built, the connection would be better, and it would be more convenient for all parties concerned.

After Congress had specially provided for an eastern terminus of the Union Pacific and provided the road should be run as one continuous line, and thus saying where the connection with the roads from the east should be made, it could hardly be said that the mere use of the words "for the more perfect connection" would indicate the intention of Congress that the actual connecting point should be somewhere else across the river.

The use of the words "for the more perfect connection of any railroad" was for the benefit of the Union Pacific. Congress was doing all in its power to make the Act attractive and aid the company to dispose of its bonds.

The "more perfect connection" was to be made, not on the western bank of the river, but on the western boundary of the State of Iowa, at the terminus fixed by the laws of Congress and the acts of the Executive thereunder.

In fact, Congress, for fear that the Union Pacific or its successors might take advantage of the language used and place thereon a strained construction such as is sought here, incorporated in the act the following:

> "*And provided*, That nothing in this Act shall be so construed as to change the eastern terminus of the Union Pacific Railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company, or its successors, from its obligations as established by existing laws."

It is not necessary to constitute "perfect" or "more perfect" connection between two railroads that each must have the use of the other's tracks at the connecting point, nor as is claimed in this case, is it necessary to constitute a "perfect" or "more perfect" connection that the appellee should have the use of the bridge and tracks thereon. All that Congress meant was that instead of making connections with eastern lines by means of ferries or ice bridges across the Missouri river, the connection when accomplished by means of a bridge would be better and more convenient for all parties.

This language in the act would draw attention to the value of the bridge. Again, provision is made in the Act of 1871 for the use of the bridge as a wagon and foot bridge, and authority is given the Union Pacific to charge tolls for the same. This authority was not granted it by the Acts of 1862 and 1864, and this provision was put in, in order to make the bridge more valuable and to aid in the sale of the bonds.

There never was any thought or intention upon the part of Congress to restrict or hamper the Union Pacific in any way.

That the connection with other roads should be on the Iowa side was clearly the purpose of Congress, and it has been so construed by this Court, which said:

> "To hold that the bridge is not a part of the road would defeat the plain object Congress had in view in 1862 and 1864—a continuous line for connection with the Iowa roads. It *would be allowing the connection to be made in Nebraska instead of on the western boundary of Iowa*, when the Act of 1871 expressly declared that nothing therein should be so construed as to change the eastern terminus of the Union Pacific Railroad from the place where it was then fixed by existing laws. Indeed, that proviso was quite unnecessary if the bridge was not thought to be a part of the railroad connecting the other part with the western boundary of Iowa."
>
> *Union Pacific R. R. Co. vs. Hall*, 91 U. S., 343, 353.

Again, we think that this question is absolutely settled by the Supreme Court in the Hall case, *supra*, for it says on page 350:

> "It is well to observe here that the authority was given to the company as a railroad company, and not as a bridge company. *The bridge was for the convenience of their road, and to enable them to connect it with other roads. They could build it for no other uses. They were not authorized to use it for other purposes than those of their road.* They were not allowed to charge rates of toll which they did

not charge upon other portions of their line. If they acquired such a right, it was by subsequent legislation—by the Act of 1871, to which we shall refer hereafter; but if, under the acts of 1862 and 1864, the company were authorized to build a railroad bridge across the river, and if such bridge was a part of their road, and not another railroad, the conclusion is irresistible that their road was intended to have its eastern terminus on the Iowa shore of the river."

*Union Pacific R. R. Co. vs. Hall*, 91 U. S., 343, 350.

We think that this is absolutely decisive of this question. Here is a construction of the Acts under which authority to build the bridge was given, that is, the Acts of 1862 and 1864, holding that the bridge was built for the convenience of the Union Pacific Railroad; that it could not be built for any other purpose, and that the company was not authorized to use it for any purpose other than that of the road itself. We therefore think there is nothing whatever in the contention of appellee that it is entitled to use this bridge because the words "for the more perfection connection of any railroads" are found in the preamble of the Act of 1871.

## Act of 1866.

It is next claimed by appellee that the Act of 1871 refers to the Act of 1866, and that under the Act of 1866 authority is given, or in the words of the appellee, it is the duty of the Union Pacific to permit appellee to cross the bridge and use the terminal facilities referred

to. The reference to the Act of 1866 in the Act of 1871 is in the following language:

> "*And for the use and protection of* said bridge and property, the Union Pacific Railway Company shall be empowered, governed and limited by the provisions of the Act entitled 'An Act to authorize the construction of certain bridges and to establish them as post roads,' approved July twenty-five, eighteen hundred and sixty-six, *so far as the same is applicable thereto.*"

It will be necessary, therefore, for us to examine the Act of 1866. We find it is a comprehensive act granting to various companies the right to construct various bridges, and shows that in each instance where it is intended that the use of the bridge shall be open to any railroad company desiring to cross the same, this limitation is incorporated as a special provision with reference to that particular bridge, and there is no general provision in the Act making this proviso with reference to all the bridges named therein.

An analysis of said Act shows the following:

In Section 1 authority is granted to construct a bridge across the Mississippi at Quincy, and provision is made for the use of said bridge by all railroads desiring to do so. Provision is also made for the trial of cases involving obstructions to navigation in the United States Court.

In Section 2 there is a general provision covering all bridges authorized by the Act, that said bridges might be constructed as draw bridges or with continuous spans, and regulating the height, size, etc., in each case. It is provided, further, in connection with the *use* of the draw

bridges, that the draw should be opened promptly to admit the passage of boats, except when trains are passing over same, and that no unnecessary delay shall occur after the trains have passed over.

In Section 3 there is another general provision also covering *all* bridges authorized by the Act, providing that all said bridges shall be lawful structures and *post routes*, also providing for rates of toll for the United States Government over same.

In Section 4 authority is given the Burlington road to construct a bridge across the Mississippi "upon the same terms, in the same manner, under the same restrictions, and with the same privileges" as in relation to the Quincy bridge.

In Section 5 authority is given to construct a bridge across the Mississippi at Hannibal "on the same terms and subject to the same restrictions" as in relation to the Quincy bridge.

In Section 6 authority is given to construct a bridge across the Mississippi at Prarie du Chien "on the same terms and subject to the same restrictions" as in relation to the Quincy bridge.

In Section 7 authority is given to construct a bridge over the Mississippi at Keokuk, and it is provided that "the said bridge, in its use and operation, shall be subject to the same restrictions" as in relation to the Burlington and Quincy bridges.

In Section 8 authority is given to construct a bridge across the Mississippi River at Winona, "subject to all the terms, restrictions and requirements contained in the foregoing sections of this Act."

In Section 9 authority is given to construct a bridge across the Missouri at Dubuque, "with the same privileges, upon the same terms and under the same restrictions," as in relation to the Quincy bridge.

In Section 10 authority is given to construct a bridge across the Mississippi River at Kansas City, "upon the same terms and conditions provided for in this Act."

In Section 11 authority is given to construct a bridge across the Mississippi at St. Louis. There is no provision in this section for the use of the bridge by any railroads constructed to the Mississippi River at that point.

In Section 12 provision is made that the St. Louis bridge, last named, shall be built with continuous spans, and height, etc., of spans provided for.

In Section 13 the power is reserved to amend the Act to prevent material obstructions to navigation by the bridges.

Hence it will be seen that Congress started out first with the Quincy bridge, and made the *special* provision as to it that it might be used by all railroads desiring to do so, and also that litigation involving obstruction to navigation might be tried in the federal court.

The next step was the incorporating in the Act of two general omnibus sections, numbers 2 and 3, covering all bridges named in the Act. The first provision is as to the *construction* of the bridges, namely, that they might be built as draw bridges or with continuous spans, and providing details as to construction. The next provision is as to the *use* of all bridges when constructed as draw bridges, namely, that they must be promptly

opened for passage of vessels as required. In Section 3 there is still another general provision as to the *use* of all the bridges, namely, that they should be post routes. For the *protection* of the bridges it is provided they shall be lawful structures. Then a provision is made for rates of toll to be charged the United States Government.

After making the general provisions contained in Sections 2 and 3 with reference to *all* bridges mentioned in the Act, Congress came back to the question of individual bridges. Of course all the general provisions named in said Sections 2 and 3 would apply, but the question would then naturally come up, as each new bridge was provided for, as to how far the special restrictions named in Section 1 with reference to the Quincy bridge should be applied, that is, whether the bridge should be open for use by any railroad company and whether litigation touching obstructions should be tried in the United States Courts. Section 4 specifically declares that said provisions should apply to the bridge at Burlington. Section 5 that they should apply to the bridge at Hannibal; Section 6 to the bridge at Prarie du Chien; Section 7 to the bridge at Keokuk; Section 8 to the bridge at Winona; Section 9 to the bridge at Dubuque; Section 10 to the bridge at Kansas City.

Section 11 provides for the construction of a bridge at St. Louis, and there are no restrictions or limitations whatever so far as the use of the bridge by railroads is concerned. There is no reference to the section authorizing the use of the Quincy bridge or such language as that it shall be built subject to the restrictions

or limitations found in this Act. There are no limitations except those that are referred to in the section itself and the section following, that is, Section 12.

We find, therefore, that in the Act of 1866 there are thirteen sections, ten of which are special and three general. The general sections are Sections 2, 3 and 13.

Section 2 relates to draw bridges, size, etc., and the *use* of the draw bridges, to be opened promptly when necessary.

Section 3 declares that all bridges shall be *lawful structures* and *post routes*. Note here the great importance Congress attached to declaring these bridges "post routes," so much so that it incorporated this provision in the title: "An Act to authorize the construction of certain bridges, *and to establish them as post roads*." Out of the many various provisions in this long Act, this was the only one that Congress deemed it essential to make a part of the title. We think this is very significant as showing the importance Congress attached to making these bridges "post routes" and that it has a direct bearing on the thought in mind in making this reference to the Act of 1866 in the Act of 1871.

We find in an amendment to the Act of 1866, in reference to the St. Louis bridge, approved July 20, 1868 (15 Stats., 123), that a special clause was inserted declaring said St. Louis bridge to be a "post road," although all the bridges included in the Act of 1866 were declared such in Section 3 thereof.

Section 13 relates to the reservation of the power of Congress to alter or amend the Act so as to prevent or remove obstructions to navigation.

We earnestly contend that when Congress used the words "as far as the same is applicable thereto" the reference was to the sections which were general in their character and not those which were special. Under any rule governing the construction of statutes that we know of, the reference would be to the general and not the special sections.

It would be just as sensible and reasonable for appellant to contend that the only section applicable is Section 11, which authorized the building of the bridge at St. Louis without the duty of permitting railroads to use it, as it is for appellee to contend that it is the other sections in the act wherein it is made the duty of the respective companies to permit railroads to cross. Here is an Act authorizing the construction of certain bridges, a number of which bridges are to be open to railroad companies, and others are not, and in the Act there are certain general provisions applicable to *all* the bridges mentioned. In a subsequent Act reference is made to the provisions of the former Act. There is no rule of law or construction that can be cited that would hold that the reference in the latter Act was to the special provisions of the former, thus referring only to some of the bridges named, and not to the general provisions applicable to all the bridges.

Counsel for the appellee, in their argument to the Circuit Court of Appeals, claimed that the restrictions as to use by railroads generally applied to the St. Louis bridge, because the Act of Congress authorizing said bridge (Section 11) required it to be "subject to all the conditions contained in said act of incorporation and

amendments thereto," and not having fully investigated the act of incorporation and amendments referred to (Missouri Acts, Feb. 5, 1864, and Feb. 20, 1865), they fell into the error of arguing that those acts imposed the restrictions in question. As a matter of fact they did not, as an examination thereof will clearly show, neither did the bridge become subject to such use by the provisions of any of the acts of Missouri or Illinois, under which it was erected.

For convenience we here quote again said Section 11:

> "SEC. 11. *And be it further enacted*, That the Saint Louis and Illinois Bridge Company, *a corporation organized under an act of the general assembly of the State of Missouri*, approved February fifth, eighteen hundred and sixty-four, and an act amendatory of the same, approved February twentieth, eighteen hundred and sixty-five, and also *confirmed* in its corporate powers under an act of the legislature of the State of Illinois, approved eighteen hundred and sixty-four, *or any other bridge company organized under the laws of Missouri and Illinois*, be and the same is hereby empowered to erect, maintain and operate a bridge across the Mississippi River, between the City of St. Louis in the State of Missouri, and the City of East St. Louis in the State of Illinois, subject to all the conditions contained in *said act of incorporation and amendments thereto*, and not inconsistent with the following terms and provisions contained in this act. And in case of any litigation arising from any obstruction or alleged obstructions to the free navigation of said waters, the

cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches."

FIRST. It will be noted that said Section 11 does not make the bridge subject to the conditions contained in the *confirmatory* act of the Legislature of Illinois, approved February 16, 1865. It is only subject to the provisions contained in the *act of incorporation* of the Legislature of Missouri of February 5, 1864, and the amendment of February 20, 1865. It is only subject to "the conditions contained in said act (not acts) of incorporation and amendments thereto," and no reference is made to the act of the Legislature of Illinois approved February 16th, under which said corporation was "*confirmed* in its corporate powers." Hence it is manifest that to determine the conditions in question reference should be had only to the Missouri act of February 5, 1864, and the amendment thereto of February 20, 1865. An examination of these acts as set out below will show that there is no restriction as to use therein, and therefore no such restriction is put upon the bridge by Section 11 of the Act of Congress above quoted.

SECOND. We now come to the question of whether, irrespective of the Act of Congress in question, the St. Louis bridge is subject to use by railroads generally. The bridge in question was not built under the provisions of the Acts of the Legislatures of Missouri and Illinois above referred to. In the Act of Congress of 1866 permission to erect the bridge is granted to the corporation therein named, the "St. Louis and Illinois Bridge Company," organized under the two Acts of the

Legislature of Missouri and confirmed in its corporate powers under the Act of the Legislature of Illinois, or to "*any other bridge company organized under the laws of Missouri and Illinois.*" It will be shown below that the bridge was constructed by a bridge company receiving authority therefor from Acts of the Legislatures of Missouri and Illinois subsequently passed.

On the 5th day of February, 1864, there was passed the incorporation act of the State of Missouri, and February 20, 1865, an act amendatory of the same, which will be found set out in full on pages 300–308 in the Appendix to the Brief of Appellee.

On March 19, 1868, there was passed by the Missouri Legislature a consolidation act, which is set out in full at page 320 of the Appendix to Brief of Appellee.

On February 21, 1867, there was passed the Illinois Act referred to in the preceding Consolidation Act, which is set out at pages 314 to 319 of Appendix to Brief of Appellee.

Under the Consolidation Act referred to the St. Louis bridge was built, and the company was called the Illinois & St. Louis Bridge Company, as provided by Section 1 of said Act. An examination of these different acts of incorporation in the states of Missouri aud Illinois will show that there was no provision in any of them *requiring* the Bridge Company to allow any railroad companies to cross this bridge.

The Illinois and St. Louis Bridge Company has the absolute and unqualified right to control the bridge without any reservations whatever.

The point which we desire to impress upon the Court

is that nothing was done and no corporation formed under the Illinois Act referred to in Section 11 of the Act of 1866. Such act contained a clause from which the inference might perhaps be drawn that railroads were to have the right to use the bridge. Nothing, however, was done under this act and the Illinois corporation which was subsequently consolidated with the Missouri corporation was organized under an entirely distinct act, viz., Act of February 21, 1867, which contained no such clause. Neither the act of Missouri, under which the Missouri corporation was organized, nor the act of Illinois, under which the Illinois Bridge Company was created, nor the Missouri act consolidating the two corporations, contained any clause whatever requiring the bridge companies to permit railroads constructed thereto to use the bridge.

So that it will be seen from an examination of these acts that counsel for appellee are entirely wrong when they attempt to show that there was any requirement on the part of Congress compelling the Illinois & St. Louis Bridge Company to allow railroads to use that bridge. This bridge was built and is the celebrated Eads bridge, and the fact is absolute and incontrovertible that from the date of its completion to the present day it has been owned and operated exclusively by this company and no railroad has ever used the bridge or received any right to cross or ever had any right to cross. All trains of roads coming into East St. Louis are taken by the company operating this bridge with its own engines, own crews, under its own terms and own arrangements.

Again Section 11 of the Act of 1866, provides that

the St. Louis and Illinois Bridge Company, a corporation organized under the acts of the State of Missouri, shall be empowered to erect a bridge, etc. The only reference to an Act of the Legislature of the State of Illinois found in this section 11 is that the powers of the Missouri corporation shall be "confirmed," etc. So it is to the Missouri corporation that we look for authority, and the terms under which the bridge shall be built, because the Illinois act is only confirmatory.

So that it is clearly seen that it must have been the deliberate intention of Congress to exempt the St. Louis bridge from the burdens imposed upon the other bridges in the same act.

## Other Congressional Acts.

For the purpose of showing that Congress did not intend to permit other railroads to use the bridge in question, and that no such meaning as is contended for by appellee is to be given to the Act of 1871, we desire to call the Court's attention to other Congressional railroad bridge acts. We have made a careful examination of many of the acts of Congress authorizing the construction of railroad bridges, beginning with the 17th United States Statutes at Large.

In each and every instance when Congress intended that other roads should be allowed to use the bridge authorized to be constructed, *it imposed this condition in clear, distinct and unambiguous terms.*

Scattered all through the statutes are these acts, several hundred in number; many of them authorizing

and directing the use of the bridge by other railroads, and many not placing this burden on the bridge.

There are a number of railroad bridge acts passed by this same Congress that passed the Act of February 24, 1871, the Congress of 1870–1871, namely:

(1) The Act approved June 30, 1870, authorizing the construction of a bridge across the Niagara River, in which act Congress, speaking in no indefinite way, states that all railway companies desiring to use this bridge shall have and be entitled to equal rights and privileges, etc.

(2) The Act approved July 1, 1870, authorizing the construction of a bridge across the Arkansas River, in which is granted express authority to other railroads to use the bridge.

(3) Two Acts approved March 3, 1871, *just exactly one week after* the approval of the Bridge Bonding Act of February 24, 1871; one of these acts authorizing the construction of a bridge across the Mississippi, and the other across the Wabash. In both of these instances we find that Congress spoke clearly and explicitly, and declared that these bridges should be subject to use by other railroad companies.

We find, therefore, that when Congress desired to impose this burden, it did so in plain, specific and unequivocal language, without ambiguity or indefinite reference to any other act.

Here are three acts passed in the same week, all under discussion at the same time, the provisions of each thoroughly considered. and in two of the acts Congress

authorized the use of the bridge to be constructed by other railroads, and in one it did not. We submit that the difference in the language cannot be ascribed to blind chance or the mere haphazard use of words. The different expressions used are pregnant with meaning.

Congress determined the necessity for the use of the bridge by other roads or not in each case. For instance, in the Act approved December 17, 1872 (17 Stats., 398) in which a bridge is authorized to be constructed across the Ohio River, above the mouth of the Big Sandy, there is no provision for its use by other railroads.

In the same way, in the Act approved March 3, 1873 (17 Stats., 610), authorizing construction of a bridge across the Genesee River, there is no provision for other roads to use it.

Act approved June 23, 1874 (18 Stats., 274), bridge across the Potomac River. No authority for use by other roads.

Act approved June 23, 1874 (18 Stats., 281), bridge across the Willamette River at Portland. No authority for use by other roads.

Act approved December 23, 1880 (21 Stats., 313), bridge across the St. Mary's River in Georgia. No authority for use by other roads.

Act approved August 8, 1882 (22 Stats., 370), bridge over the St. Croix River. No authority for use by other roads.

Act approved May 29, 1884 (23 Stats., 30), bridge across the Rio Grande River at Laredo, Texas. No authority for use by other roads.

Act approved July 5, 1884 (23 Stats., 104), bridge across the Mississippi River at St. Paul. No authority for use by other roads.

Act approved February 25, 1885 (23 Stats., 309), bridge across the St. Croix River, at Stillwater, Minn. No authority for use by other roads.

Act approved June 24, 1884 (23 Stats., 52), bridge across the Willamette River near Salem, Oregon. No authority for use by other roads.

Act approved April 28, 1884 (23 Stats., 14), bridge across the St. Croix River between Wisconsin and Minnesota. No authority for use by other roads.

Without proceeding further in detail, we may state that we have examined the 24th, 25th, 26th, and 27th United States Statutes, for the years 1886–1893, and in these we find twenty-eight different railroad bridge Acts authorizing the construction of railroad bridges across the rivers of the United States, without any provision that they should be used by other railroads.

We confidently submit, therefore, that these acts show conclusively and indisputably that Congress, when it intended that the bridge authorized to be constructed should be open to the use of all railroads desiring it, so stated in no uncertain terms. What other reason can be assigned for the constant repetition and reiteration of the declaration that these bridges should be used by all other railroads in many of these acts and entire absence of the same declaration in many others? We think that there can be no other answer than the one that we have before given. We do not believe a case can be found in which the intention of Congress could be more clearly shown

than is established by an examination of these different bridge acts.

Counsel for appellee have referred to the language of Judge SANBORN in delivering the opinion of this Court in the *Rock Island case*, 51 Fed. Rep., 309, wherein Judge SANBORN refers to the fact that in almost all of the large number of statutes authorizing the construction of bridges by Congress a provision is incorporated granting the right to other companies to use the same.

This is true, and is it not significant that Congress always in express terms gave this authority and imposed this burden and almost always in the same language?

On the other hand, we have shown that in a large number of such statutes no such authority is given and no such burden is imposed. This clearly establishes the intention of Congress to relieve, for good and sufficient reasons, certain bridges from the imposition of this burden.

How strikingly significant is all this when we consider the Act of 1866 itself! Right in this very act there were eight bridges authorized to be constructed across the Mississippi and Missouri Rivers, on seven of which this burden was imposed, and on one of which (the Great Eads Bridge at St. Louis) it was not.

Again, it is important to notice that no such language was used in the Act of 1871. The other side contend that it is found in almost all similar statutes. Certainly that is true. Then why not put it in the Act of 1871? No, Congress intended, for the reasons we have shown, that these connecting lines should not cross the bridge, but that the connection should be made upon the Iowa

side of the river, and thus nothing done to contravene or interfere with the settled determination of Congress that the eastern terminus of the Union Pacific should be on the Iowa side.

To show that this omission was not an oversight, but was the deliberate act of Congress, we would call the Court's attention to the following facts:

(1) On the same week of the passage of the Act of 1871, in which we claim this burden was not imposed on the Missouri River Bridge of the Union Pacific, Congress imposed it on three other bridges, one over the Mississippi River at Louisiana, Missouri, one over the Missouri River at Glasgow, Missouri, and one over the Wabash River, declaring in each instance in specific terms that,

> "All railway companies desiring to use the said bridge, shall have and be entitled to equal rights and privileges in the passage of the same" (16 Stats., 474 and 600).

(2) That in the Act of 1866 Congress embodied in the St. Louis bridge section that portion of Section 1 of said act relating to the jurisdiction of the federal courts to try questions of obstruction to navigation, but entirely omitted the other provisions of the same Section 1 that other railroads should be permitted to use the bridge.

(3) The Act of 1866 was amended July 20, 1868, by which amendment the St. Louis bridge was declared to be a post road, and in this amendment, Congress again considering this subject, did not impose the burden

that this bridge should be used by other railroads desiring the same. (See 15 Stats., 123.)

We confidently assert that the intention and purpose of Congress was never more clearly established and shown in any controversy as to the construction and meaning of any law of the United States than here.

What, then, was the intention of Congress by this reference to the Act of 1866? Bearing in mind the contention, as above stated, as to whether the bridge, when completed, would or would not be a part of the Union Pacific Railroad, and thus subject to the provisions in the Pacific Railroad acts as to use by the Government for transmission of its mails and troops, it is evident that Congress intended by the phrase, "use and protection of said bridge and property," to refer to the *general* provisions of the Act of 1866, whereby the bridges were declared "lawful structures and recognized and known as post routes," thereby legalizing the construction of the bridge, approaches, depots, etc., if such legalizing was necessary, and binding them to the use of the Government for the transmission of its mails and troops.

It will not be presumed that Congress intended to do a thing beyond its power, and, as hereinafter shown at more length, we contend that it was beyond the power of Congress, if it so intended, to place this additional burden on the bridge, as to the first mortgage bondholders, and thus depreciate the value of their security. The bondholders at that time had a vested right in the bridge when completed as security for the debt owed them, which right could not be affected by any act of

Congress. True, additional burdens might be placed on the bridge as to the Union Pacific Railroad Company, the owner, with its consent, but not as to the mortgage bondholders. This act must be construed, if possible, so that its provisions are within the power of Congress. It must be clearly borne in mind that it was not an act to authorize the *construction* of the bridge, but to authorize a *bond issue* thereon.

The act is entitled:

> "An Act to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa."

It would be unreasonable to suppose that Congress, after having given the Union Pacific Company, in the Acts of 1862 and 1864, authority to construct this bridge, without any conditions imposed as to its use by other railroad companies, would now in 1871, when the Union Pacific was coming before it with the request for assistance, asking simply for authority to borrow money on the security of the structure, impose new burdens on the bridge which were not contemplated when the authority was originally granted to build it. All the bridge acts, in which it was provided that the bridge should be open to the use of all railroads, were acts originally authorizing the *construction of* the bridge. None of them were acts supplemental to the original acts authorizing the construction, as in this instance.

It is to be constantly borne in mind that the Act of 1871 did not authorize the construction of the bridge,

but simply authorized the raising of money to pay for a bridge partially built. As was said by this Court in the Hall case (p. 353), in speaking of the Act of 1871:

> "There is no intimation in it of a distinct bridge franchise. It grants no power to build a bridge. Its main purpose, manifestly, was to give the company additional means and privileges for the completion of a structure already authorized."

The erection of the bridge was authorized by the Acts of 1862 and 1864, and was begun in 1868 (Record Evidence, p. 585). As the bridge was completed in February, 1872, one year after the passage of the bonding act, it must have been more or less under way at the time the bonding act was passed. While the Act of 1871 referred to the Act of 1866, it must be remembered that the Act of 1866 was not a bonding act, but authorized the construction of bridges. Now, it cannot be supposed that Congress, in its reference in the Act of 1871 to the Act of 1866, intended to incorporate such part of the latter act as by its terms necessarily related to bridges, the building of which had not been theretofore authorized. That is to say, a provision relating to a bridge, which was authorized by the act itself to be built, might very properly require that as a condition of the building of the bridge the company should permit other roads to use it, but why, when a bridge has been already authorized to be built as part of its road, and without any condition as to its use by other roads, and has been partially built, should it be assumed that such conditions were incorporated in an act which was passed to

raise money to complete such partially built bridge by reason of a reference in such bonding act to an act which contained general provisions, as well as specific conditions in regard to bridges authorized by such act to be built. In other words, the construction which is sought to be placed on the Act of 1871 would take from the railroad, that absolute use of, and property in, the partially constructed bridge, which it had acquired under the Acts of 1862 and 1864, and compel it to divide it with other railroads.

It must at least be conceded that grave doubts exist as to the intention of Congress to impose upon this bridge the burden of use by other railroads. Equity does not enforce the specific performance of contracts whose terms and obligations are uncertain or doubtful. If there is to be taken from this appellant the freedom of contract, the right to use its own property in its own way, the right to select its own associates, the right to choose its own partners, the authority to do so must be clear and undoubted. A court of equity ought not to impose such contractual relations as are sought in this case under any strained construction, by inference taken from vague and indefinite references.

We, therefore, earnestly and confidently submit that no authority was conferred upon other railroads to use the Missouri River bridge of the Union Pacific by any action of the Congress of the United States, and that the reference in the Act of 1871 to the Act of 1866 was to the general provisions of the Act of 1866, relating to the use and protection of the bridges therein authorized to be constructed.

## SECOND POINT.

**The power to alter, amend and repeal the charter of the Union Pacific Railroad Company did not give Congress the power to take from the Railroad Company property acquired by it in the exercise of its franchises and corporate powers; and its roadbed and the use thereof west of 20th Street, Omaha, could not be taken from it and given to another under the guise of an amendment of its charter.**

### I.

Numerous errors were assigned in our argument to the court below on the question of the holding of the lower court that appellee would have the right to use the tracks of the Pacific Company from Omaha to South Omaha and the terminal facilities and stockyard tracks there. This assignment seems to have been entirely overlooked by that court, and nowhere in the opinion do we find the question discussed or that right determined, they seemingly taking it for granted that if the right to go to Omaha was found, it necessarily carried with it the right to go to South Omaha.

We call the Court's particular attention to this branch of the case and the assignments of error in regard thereto as the mere suggestion of such demand on the part of appellee must shock the conscience of a court of equity.

As the discussion of one error involves necessarily the discussion of all, they are grouped in this subdivision of our brief.

The Bridge Mortgage Act of February 24, 1871,

provides that the mortgage to be given thereunder should cover:

> "The Bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge over said river, and the tracks and depots required to perfect the same, as now authorized by law of Congress."

As we have heretofore shown, this act was passed solely for the purpose of enabling, authorizing and empowering the Union Pacific to raise funds with which to construct the bridge. We should, therefore, turn to the mortgage given in pursuance of this power, to ascertain what property was covered by that instrument.

This mortgage is found on pages 66 to 86, inclusive, of the bill of complaint, and the description of the property conveyed thereby, on page 74, is as follows:

> "All and singular the said bridge over the River Missouri, between Omaha and Council Bluffs, and the approaches thereof, and the appurtenances belonging thereto, including all parts and portions of said bridge now constructed or hereafter to be constructed, and the depots at Council Bluffs and Omaha as aforesaid, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the neighboring lines included in this conveyance as well the lines and tracks now constructed as those which may hereafter be constructed, and also all estates, terms and rights of way of the said bridge, approaches and appurtenances, as well now held by the company, as to be hereafter acquired by it, and all the rights and privileges of the said company of, in or to the said bridge, approaches or

appurtenances, or touching, concerning or appertaining to the maintenance, use and occupation thereof."

This would cover the property, as shown by the map, from the Transfer Depot in Council Bluffs to the Bridge Junction, or junction with the old main line of the Union Pacific, which is shown by the testimony to be at Twentieth Street in the City of Omaha.

We are met now with the startling and amazing proposition that under this act, this mortgage and this description, not only is the appellee entitled to the bridge and facilities to Twentieth Street, in the City of Omaha, but all of the property of appellant from there on through Omaha and into South Omaha, four and a half miles distant therefrom, and even one and one-half miles further on south and west from South Omaha to the town of Gilmore.

It is shown by the evidence in this case that the City of South Omaha was not in existence until after the years of 1888–1889. It is located about four miles from Twentieth Street in the City of Omaha. Prior to its incorporation as a city, and long subsequent to the passage of the Act of 1871, the packing houses of Swift, Hammond, Armour and others were erected in this vicinity, and the city was incorporated thereafter and grew up around these industries.

The act in question was approved February 24, 1871. The mortgage was given April 1, 1871. At the time of these events South Omaha was not even thought of.

The act, in title, phrase and under any reasonable construction of each and every provision thereof, was for the purpose of having a bridge constructed for connections

with railroads at or near Council Bluffs, Iowa, and Omaha, Nebraska, not South Omaha, or Valley, or Columbus, or Kearney, or North Platte, Nebraska, or Denver, Colorado. It never was in the contemplation of Congress that by the phrase "approaches and appurtenances," after the town had been designated, any use thereof should be extended to another depot in another town, along the main line of the railroad.

If under any strained construction it is held that the act contemplated the right to use the tracks to South Omaha, it might just as well be said that the right is given to use the track to Denver, or the end of the line. The fact that South Omaha lies near or adjacent to Omaha would make no more difference so far as the abstract right to the use of the tracks is concerned, than if it lay ten, twenty, a hundred or five hundred miles away.

Under the decree as entered by the Court below, appellee is entitled to the full, joint and free use of all tracks and side tracks between Omaha and South Omaha, amounting in all to about 80 miles of track; of the bridge; of the Omaha Union passenger station constructed in 1898, by Union Pacific Railroad Company; of side and spur tracks branching off and reaching in different directions from Omaha on to South Omaha; of tracks to various industries in the City of Omaha, to which the lines of appellant have been constructed. All of these facilities and terminals were purchased and acquired at great expense by appellant, yet under this far-reaching decree appellee is entitled to all of these privileges and others under the term "approaches and appurtenances."

It is shown by the evidence in the case that the west end of the bridge across the Missouri River is about 700 feet east from the original, natural and present level of the surface of the ground, and that the embankment from the west end of the bridge to the present natural level is about 700 feet in length. In other words, that at a distance of only 700 feet from the west end of *the bridge, the approaches end.*

By the term "appurtenances" is meant simply the facilities incident to the operation of the bridge, such as the connections with the tracks over the bridge, which we contended could, by no process of reasoning, be extended further than Twentieth Street in the City of Omaha.

Judge SANBORN, in the foreclosure proceedings, has distinctly and clearly outlined what is covered by the Bridge Division or the property covered by the Bridge Mortgage, and held that this covers the line extending from Council Bluffs to Bridge Junction in Omaha, and including the short branch at Council Bluffs. This would put the eastern terminus at Council Bluffs, Iowa, and the western terminus at the Bridge Junction or Twentieth Street, in Omaha, Nebraska.

The history of the Bridge Division is as follows: The Union Pacific was originally constructed from a point on the west bank of the Missouri River near the northeast corner of Section 10, Township 15, Range 13, in the State of Nebraska, and runs in a southwesterly direction about four miles to Bridge Junction, and thence westerly on the main line of the railroad now in use to a point about five miles west of Ogden, Utah. This was

the line of railroad on account of which the subsidy bonds were issued. The railroad was completed in 1869, and all the subsidy bonds were issued before 1870, and before the Omaha Bridge or its approaches were completed. In this condition of affairs Congress, in 1871, authorized the Union Pacific to issue bonds to the amount of $2,500,000, to raise money to complete the building of the Omaha Bridge, and to secure the payment of these bonds by a mortgage upon the bridge and its approaches. The bonds were issued and sold, and with the proceeds the bridge was completed.

So that the Bridge Mortgage Act of 1871, the mortgage and the decree, all show conclusively that the bridge and its approaches covered the property between Council Bluffs, Iowa, and Twentieth Street in Omaha, Nebraska, and no more, and this was the construction placed thereon by all parties at the time the mortgage was given and all transactions and operations thereunder have been carried on in accordance with that understanding. This division and description was made clear and distinct in the foreclosure proceeding. It was upon the ground that it was a distinct piece of property and a distinct division that the contention of the Government of the United States was overturned in those proceedings.

We are again confronted upon this branch of the case with expressions in the opinion in the case of *Union Pacific Ry. Co. vs. Chicago, R. & I. P. Ry. Co., supra.* In that opinion it says (p. 586):

> "For the provisions of the Pacific Railroad acts relating to the bridge over the Missouri River, its

construction and operation, imposed on the Pacific Company the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and tracks between Council Bluffs and Omaha, and we think that South Omaha was included."

* * * * * * * *

"It is true that it appears that from the depot to the point in South Omaha where the tracks of the companies connected is about four miles; but the scheme of Congress was to accomplish the more perfect connection 'at or near Council Bluffs, Iowa, and Omaha, Nebraska,' and we think this distance reasonably within the terms of the Act of 1871, liberally construed, as the act should be."

We respectfully but firmly contend that these expressions were not warranted by the issues or evidence in that case, and that if they are followed, a grave and serious mistake will be made and great injustice done to the appellant herein.

In that case the power to make the contract between the Union Pacific and the Rock Island companies was in question. By the terms of that contract it was agreed that the Rock Island Company should have, not only the right to use the bridge and terminal facilities at Council Bluffs and Omaha, but also the right to run to, and use the tracks and facilities at South Omaha. The property that the Union Pacific Company had solemnly contracted should be used, and for which lease was made, should under no circumstances be the gauge or measure by which in a proceeding of this kind the rights of the appellee are to be fixed and determined.

Yet the court below in the case at bar took this contract, as a measure of the rights of the appellee, and gave to it (irrespective of what should be determined by the court would be fair and right in equity, under all circumstances in the case), everything embraced in the contract and even went further and gave to appellee rights which the Rock Island and Milwaukee companies under their contracts, had never presumed to demand.

The rights of the Rock Island Company under that contract were entirely different from the claimed rights of the appellee in this equitable proceeding.

The contract in the Rock Island case had fixed clearly the extent and limit of the facilities. This being so, why, after having found that the contract was a binding one, thus determining the only issue in the case, should the opinion proceed to discuss the extent of the rights of the Rock Island Company after they had been irrevocably fixed by the terms of the contract itself.

The discussion was entirely unnecessary and uncalled for. No reason whatever is assigned why the Act of 1871 should be "*liberally construed.*" The Rock Island Company was making no claim under the Act of 1871 whatever. It stood upon the contract. Its cause was based upon the contract. The Union Pacific Company admitted the execution of the contract, but denied its power to enter into it, not because of the Act of 1871, but because it was without the general powers under its incorporation. There was no necessity for a liberal construction of the Act.

Even if it is admitted for the sake of argument that

the Union Pacific was compelled to allow other roads to use its bridge across the Missouri River, its approaches and appurtenances, that use should not be extended to another town four miles distant. Such a use of the track to South Omaha, under any possible construction, cannot be justly or logically injected into the act. The Court in the Rock Island case seeks to justify the use in its opinion of the expressions above quoted on the language in the first part of the Act of 1871, which is as follows:

> "For the more perfect connection of any railroads that are or shall be constructed *to the Missouri River, at or near* Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company be and it is hereby authorized to issue bonds," etc.

The argument found at the bottom of page 588 of the Rock Island case, absolutely refutes the conclusion which is arrived at, as the Court there quoted from the case of U. P. R. R. Co. vs. Hall, 91 U. S., 343, as follows:

> "The scheme of the Act of Congress, then, is very apparent. It was to secure the connection of the main line with the Missouri and Iowa railroads," etc.

The moment that appellee is allowed to run into the Union Depot, the connection to which he refers is made, and if that was the purpose, why then go further and say that not only can this connection be made, but that the road can go beyond to an independent city on the line of the Union Pacific road, thus really making no

connection at all with the Union Pacific. The language quoted, "within these States at points at or near their western boundaries," was used because at the time this grant was made the depot locations had not been made, and Congress could not be any more definite than that unless it had added to that clause, "at such points at which depots may be hereafter established." This would be only surplusage, as any ordinary construction of the language used, taking into consideration the purposes for which it was used, would lead to but one conclusion, and that was that the connection would be made at the depots of the company rather than at some point out in the Nebraska or Iowa prairies.

Appellee relies upon the Act of 1866. It admits that there is no direct authority in the Act of 1871 that the bridge shall be used by any other railroad desiring it, but it does insist that the Act of 1871 refers to the Act of 1866, and so it is finally upon the terms of the Act of 1866 that its rights, whatever they may be, must be determined.

The only place in the Act of 1866 where anything is said about the use of bridges by other railroads is in the first section thereof, referring to the Quincy bridge. The portion of that section referring to that matter reads as follows:

> "And to lay on and over said bridge railway tracks, for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to

*cross said bridge* for reasonable compensation to be made to the owners of said bridge."

The only authority, therefore, in the Act of 1866 is to cross the bridge. When this has been granted, allowed or accomplished, the right ends. We admit that a reasonable construction of the "bridge" would cover the necessary approaches to get on or off the same, but the source of right and authority in this case is the Act of 1866 and the phraseology last above quoted.

If we have now a clear understanding of the provisions of this act bearing upon this question, let us consider what is meant by "at" or "near" or "opposite." Construing this language, "constructed to the Missouri River at or near Council Bluffs, Iowa, or Omaha, Nebraska," in connection with the language found in the Act of 1866, it means (if we concede that authority is given to cross) that any road terminating at or near Council Bluffs, Iowa, should have the right to cross the bridge over the Missouri River and enter Omaha, Nebraska; that any road terminating at or near Omaha, Nebraska, should have the right to cross the bridge and enter Council Bluffs, Iowa. Under no construction of this act can it be successfully claimed that any road terminating at or near Council Bluffs, Iowa, would have the right not only to cross the bridge and enter Omaha, Nebraska, but also to run on and over the company's lines to a point four miles distant in another town. Nor could it be successfully claimed that a railroad terminating at or near Omaha, Nebraska, would have the right to run its trains across the bridge, through Council Bluffs and on to Neola, Iowa, twenty miles distant.

But this is just the construction appellee is attempting to have placed upon these acts. Appellee, terminating at a point on the Missouri at or near Council Bluffs, Iowa, claims the right to cross the bridge, enter the Union Pacific depot in Omaha, and then to extend its line on and over four miles of track and enter South Omaha and use the terminal and stock facilities there.

If appellee's contention is correct that it can use the bridge, then by this language Congress meant to cover roads constructed to the Missouri River coming from the east or from the west. It would grant to the road coming from the east the right to cross the bridge into Omaha. It would grant to the road coming from the west the right to *cross* the bridge into Council Bluffs. This would give them the right "to cross the bridge," if such a right was intended by the Act of 1866.

We most earnestly urge upon the Court, and press on its attention, that the language is clear and explicit. There is no reason to place any strained construction upon this statute. There is no necessity for a liberal construction of these Acts. We insist that if there is occasion for any liberality, it should be exercised in favor of appellant.

II.

The construction placed by the court below upon the Missouri River Bridge Act of 1871, takes from the appellant the right to use its property west of 20th Street, Omaha, as it sees fit, and substantially confiscates it. Such confiscation is sought to be justified upon the ground that Congress had the power under the provision

in the granting acts of 1862 and 1864, permitting it to alter, amend or repeal the granting act, to diminish the security of the bondholders without their consent, and that the appellant having succeeded to the rights of the bondholders acquired such security in its diminished form.

The line of the Union Pacific Railroad Company west of 20th Street, Omaha, was built prior to the execution of the mortgage of March 1, 1865. Such mortgage covered the entire property of the railroad then existing, or which it might thereafter acquire. The property so mortgaged had been brought into existence by and was the result of the grant to the Railroad Company by the Government of certain rights and franchises. In this property the Union Pacific Railroad Company and the purchasers of the bonds secured by the mortgage of 1865, had certain vested interests, and the question is, whether such vested interests and such property and rights of property can be taken from the old original Congressional corporation and the holders of bonds secured by its mortgage, under a power to alter, amend or repeal the charter of a railroad company.

The property in the railroad west of 20th Street, Omaha, and its use, were the fruit and result of the grant to the Railroad by the Government of its franchises and corporate powers. While the result and outgrowth of such grant, it was not part of the grant itself, and the power to alter, amend and repeal a charter, as we understand it, has certain limitations and can only be exercised for the purpose of altering, amending or repealing that which was received by the corporation

from the State which created it. Such power to alter, amend and repeal does not, as we think, include the right to take from the corporation and the holders of its bonds secured by a mortgage upon its property without their oonsent, the property which it had acquired in the exercise of the corporate powers and franchises granted to it by the Government. In other words, to take from a corporation under the guise of altering, amending or repealing its charter, the property which it has acquired in the exercise of its corporate powers and franchises would be to confiscate and take from such corporation, its property without due process of law. This question was discussed by this Court in the *Sinking Fund cases*, 99 U. S., 700, where it was said at page 720, in referring to the acts of 1862 and 1864, incorporating the Union Pacific Railroad Company:

> "We are of the opinion that Congress not only retains, but has given special notice of its intention to retain, full and complete power to make such alterations and amendments of the charter as come within the just scope of legislative power. *That this power has a limit no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made.* * * * We think it safe to say that whatever rules Congress might have prescribed in the original charter for the government of the corporation in the administratior of its affairs, it retained the power to establish by amendment. In so doing, it cannot undo what has already been done, and it cannot unmake contracts that have already been made, but

> it may provide for what shall be done in the future and may direct what preparation shall be made for the due performance of contracts already entered into."

It is certainly clear that the roadbed of the Union Pacific Railroad Company west of Twentieth Street, Omaha, and the use of such roadbed by the Railroad Company as it chose were property "acquired under the operation of the charter," and such property could not be taken from it by any amendment of its charter and franchises. As was said in the case of *In re Tiburcio Parrott*, 1 Fed. Rep., 481, 491:

> "It is not merely the title to the property that is protected from legislative confiscation, but that which gives value to all property, the right to its lawful use and enjoyment."

In *United States vs. Union Pacific R. Co.*, 160 U. S., 1, 33, it was said by Mr. Justice HARLAN, in speaking for the Court in regard to the Union Pacific Railroad Company, as follows:

> "It would not be competent for Congress, under the guise of altering and amending the act in question, to impose upon the railroad company, duties wholly foreign to the objects for which it was created, or for which governmental aid was given. Neither could it, by such alteration and amendment, destroy rights actually vested, nor disturb transactions, fully consummated."

In the case of *Rice vs. Minn. & Northwestern R. Co.*, 1 Black, 360, one of the questions was whether the defendant acquired any right, title or interest in the lands in controversy by virtue of the provisions of its

charter, and it was held that if it did, then that a repeal of such charter could not deprive it of its land. At page 373 it was said:

> "If the defendants acquired such a right, title or interest in the lands under their original charter, then it is clear that it became a vested interest as soon as the act of Congress went into effect, and on that state of the case, it would be true, as contended by the defendants, that the repealing act set up in the replication of the plaintiff is void, and of no effect."

In *Coast Line R. Co. vs. City of Savannah*, 30 Fed. Rep., 646, 650, an act of the Georgia Legislature attempting to authorize the defendant city to compel plaintiff to leave three feet on each side of their track was held unconstitutional. The Court said:

> "It is competent for the State, in the exercise of its reserved power (Code 1682) to alter the act incorporating the company in all particulars constituting the grant to it of corporate rights, privileges and immunities. These flow from the State and should properly be kept under its control. But where the corporation has, by contract or otherwise, acquired vested rights, it is not competent for the legislature to take them away. The State cannot undo what has already been done. It cannot unmake contracts that have already been made. All such rights of the corporation legally acquired are equally beyond legislative interferences."

In *Detroit* v. *Plank Road Co.*, 43 Mich., 140, 144, 147, the State had in 1879 passed an act forbidding a plank road company to maintain a toll-gate within the corporate limits of a city without the consent of the

local authorities. The limits of the City of Detroit having been extended so as to embrace a portion of the road and a toll-gate of the respondent company, the city brought mandamus to compel the removal of this toll-gate. The charter of the respondent was by its express terms subject to amendment. The Court held that the "mandamus must be denied" and said (COOLEY, J.):

> "The effect of this legislation, if valid, would be to take from respondent about two miles and a half of the road upon which it now collects toll. It is not pretended that this is done by reason of any forfeiture done or suffered by the respondent, and if it were, a judicial finding would be necessary. *Flint, etc., Plank Road Co. v. Woodhull, 25 Mich., 99.* Nor is it clamed that the act of 1879 was passed as a regulation of police. It would probably be conceded that it goes quite beyond the competency of an act of mere regulation, and that it must be sustained if at all, as an act passed in the exercise of that complete power to amend and repeal, which was reserved in passing both the general act of 1848 and the charter of respondent. The City relies upon it as an exercise of that power and not otherwise.
>
> "* * * (p. 147). But there is no well considered case in which it has been held that a legislature, under its power to amend a charter, might take from the corporation any of its substantial property or property rights. In some cases the power has been denied where the interest involved seemed insignificant. The case of *Albany, etc., R. R. Co. v. Brownell, 24 N. Y., 345,* is an illustration. It was there decided that although the legislature

might require railroad companies to suffer highways to cross their tracks, they could not subject the lands which the companies had acquired for other purposes, to the same burden, except in connection with provision for compensation. The decision was in accord with that in *Commonwealth v. Essex Co., 13 Gray, 239, 253*, in which, while the power to alter, amend or repeal the corporate franchises was sustained, it was at the same time declared that 'no amendment, or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted'. The same doctrine is clearly asserted and affirmed in *R. R. Co. v. Maine, 96 U. S., 499*, and is assumed to be unquestionable in the several opinions delivered in the *Sinking Fund Cases, 99 U. S., 700.*

"But for the provision in the Constitution of the United States, which forbids impairing the obligation of contracts, the power to amend and repeal corporate charters would be ample without being expressly reserved. The reservation of the right leaves the State where any sovereignty would be, if unrestrained by express constitutional limitations, and with the powers which it would then possess. It might therefore do what it would be admissible for any constitutional government to do when not thus restrained, but it could not do what would be inconsistent with constitutional principles. And it cannot be necessary at this day to enter upon a discussion in denial of the right of the government to take from either individuals or corporations any property which they may rightfully have acquired. In the most arbitrary times such an act was recognized as pure tyranny, and it has been forbidden in

England ever since *Magna Charta*, and in this country always. It is immaterial in what way the property was lawfully acquired; whether by labor in the ordinary avocations of life, by gift or descent, or by making profitable use of a franchise granted by the State; it is enough that it has become private property, and it is then protected by the 'law of the land.' Even municipal corporations, though their charters are in no sense contracts, are protected by the constitution in the property they rightfully acquire for local purposes, and the State cannot dispoil them of it. *Territt v. Taylor*, 9 Cr. 43; *Pawlet v. Clark*, 9 Cr. 292; *State v. Haben*, 22 Wis. 660; *People v. Common Council*, 28 Mich., 228.

"* * * What the state claims a right to do is to deprive the respondent of the privilege any longer to take tolls for travel and traffic on two miles and a half of its road. If it may do this in respect to one part of the road, it may in respect to any other part. If it may exclude the respondent from Detroit, it may from Howell also, or from any township on the line, and a single section of a statute may annihilate the property of respondent altogether. A statute which could have this effect would not be a statute to amend franchises, but a statute to confiscate property; it would not be a statute of regulation, but of spoliation.

"It may be that what the legislature of 1879 proposed to accomplish would in itself work no hardship to respondent, and would be highly desirable to the city; but the principle violated is the fundamental principle that underlies all property; and the first successful inroad upon it that obtains judicial sanction may be a precedent that shall let in innumerable evils. Courts must look beyond

the particular case to the governing principle, and be governed by that, regardless of temporary and special inconveniences. But even such inconveniences must be trivial, since the power to appropriate private property to public uses is always ample and always at command."

In *People vs. O'Brien*, 111 N. Y., 1, 34, a street railway company acquired from the City of New York the right to lay its tracks and run its cars over Broadway; and thereafter mortgaged its property and franchises. The legislature, pursuant to its reserved power, repealed the company's charter. The question involved is stated in the court's opinion as follows:

"In other words, we think the material question for discussion here is whether the franchise to maintain tracks and run cars on Broadway survived the dissolution of the corporation."

In the course of the opinion, the Court said at p. 36:

"It is, therefore, urgently contended by the attorney-general that none of the franchises of the corporation survived its dissolution, and that the mortgages previously given thereon, as well as all contracts made with connecting street railroads for the mutual use of their respective roads fell with the repeal, and could not be enforced.

"If it could be supposed for a moment, that this claim was reasonably supported by authority, or maintainable in logic or reason, it would give grave cause for alarm to all holders of corporate securities.

"The contention that securities representing a large part of the world's wealth are beyond the reach of the protection which the Constitution

gives to property, and are subject to the arbitrary will of successive legislatures, to sanction or destroy at their pleasure or discretion, is a proposition so repugnant to reason and justice as well as the traditions of the Anglo-Saxon race in respect to the security of rights of property, that there is little reason to suppose that it will ever receive the sanction of the judiciary, and we desire in unqualified terms to express our disapprobation of such a doctrine. Whatever might have been the intention of the legislature, or even the framers of our Constitution, in respect to the effect of the power of repeal reserved in acts of incorporation, upon the property rights of a corporation, such power must still be exercised in subjection to the provisions of the Federal Constitution.

* * * * * * * *

"These rights of property having been acquired and created under the express sanction and authority of the State, it remains to inquire whether they were defeasible and subject to be taken away through the exercise of any power reserved by the State to alter, amend and repeal laws or charters (p. 44).

* * * * * * * *

"We are, therefore, of the opinion that the Broadway Surface Company took an indefeasible title to the land necessary to enable it to construct and maintain a street railroad in Broadway, and to run cars thereon and for the transportation of freight and passengers, which survived its dissolution" (p. 55).

In *Millar vs. R. R. Co.*, 21 Barb., 513, 515, where the defendant's charter contained the usual reservation, it was held that a subsequent act of the legislature requiring the defendant to cause a new highway to be

taken across its track and to cause all necessary embankments, excavation and other work to be done on its road for that purpose, and (inferentially) at its own expense was unconstitutional, and said:

"The power reserved to the legislature to alter, modify or repeal the defendants' charter, did not purport to authorize the assumption of their property without compensation. No power to do that could have been reserved, for none could have existed. It would be preposterous to say that the legislature has the power to make any and every requisition upon the defendants as a condition of their retaining their corporate existence. To require them for instance, to make donations to the towns through which their railroad may pass, or any other body politic or to individuals."

In *Johnson vs. Goodyear Min. Co.*, 127 Calif., 4, an act of the California legislature giving laborers liens for wages in the property of the employer corporation, was held unconstitutional, the Court saying, at page 17:

"It is said that corporations being the creatures of the State, and deriving their powers from their charters, the same power that created them may alter or amend their charters or deprive them of rights originally given them. This is true as to certain purposes, but the legislature cannot, after creating a corporation, and while it exists, deprive it of the rights guaranteed to it by the federal constitution, nor deprive it of its right to resort to the courts of law, nor take its property without due process of law, nor subject it to unequal and oppressive burdens, nor deprive it of the equal protection of the laws."

In *Orr vs. Brackton County*, 81 Ky., 593, 596, the Court said:

> "The right to amend the charter may be expressly reserved, but that right does not confer the power of taking from the corporators the control of the corporate property, or to change the object of the charter by taking from those having a right to select their officers under the charter, that right, and placing it in the hands of those whose stock, by reason of the increased power conferred by the amendment, are enabled to control the corporation. The right was not asked by the corporation, but granted by the legislature at the instance of a few stockholders without the consent or knowledge of the others. Conceding the right of the legislature to make the amendment, the corporation declined to accept it, and therefore the order entered below requiring an election must be reversed and cause remanded, with directions to set aside the order and for further proceedings."

It will, of course, be conceded that the right of the Union Pacific Railroad Company to use its tracks in its own way is proper. To compel it to make an involuntary arrangement with another railroad, by which the latter shall use its property, is to make its property thereby less valuable, and to enforce against its will a division of its property with another, is to deprive it of such property without due process of law. The question whether such property could be taken from it and from the holders of its bonds by an amendment to its charter without their consent was not considered or discussed in the case of Union Pacific R. Co. vs. Chicago,

Rock Island & Pacific R. Co., 163 U. S., 564. There is no suggestion of this subject either in the briefs of counsel or in the opinion of the Court. It was not presented or argued in any way, and the Rock Island case can not be considered an authority upon the proposition, which is certainly squarely presented to the Court in this case.

Whatever may be said as to the other questions involved, it is certainly clear that the question now under discussion was never brought to the attention of the Court in the Rock Island case, viz.: whether property acquired by a corporation by virtue of franchises received by it from the government, which has been mortgaged, can subsequent to the mortgage be taken from the bondholders without their consent under the power reserved by the act of incorporation permitting an amendment, alteration or repeal of its charter.

There is no evidence in this record that the bondholders of the old Union Pacific Railroad Company ever consented to the security for their bonds being taken from them and materially diminished by the use of the tracks belonging to their mortgagor being given to another railroad. The value of the security which the bondholders had was in its use as a railroad. All that there is of value in a roadbed and tracks is their use. To say, therefore, that such use, which is the real security for the bonds, can be taken from their mortgagor and therefore from the bondholders without their consent is in effect to confiscate their security. The tracks west of 20th Street, Omaha, were built prior to the mortgage of 1865. At the time of the execution of

such mortgage no other railroad had the right or power to compel the Union Pacific Railroad to permit it to use them. The mortgagor therefore gave to the trustee under the mortgage the property which it then had in the condition in which it then held it, viz., that it could not be compelled to share it with another railroad. It was then free to do with it as it chose and to change such conditions as against such bondholders without their consent would be in effect to take their property without due process of law and we repeat again the words of Chief Judge RUGER in People vs. O'Brien, 111 N. Y., 1, 36, that

> "The contention that securities representing a large part of the world's wealth are beyond the reach of the protection which the Constitution gives to property, and are subject to the arbitrary will of successive legislatures, to sanction or destroy at their pleasure or discretion, is a proposition so repugnant to reason and justice as well as the traditions of the Anglo-Saxon race in respect to the security of rights of property, that there is little reason to suppose that it will ever receive the sanction of the judiciary, and we desire in unqualified terms to express our disapprobation of such a doctrine."

The State gives to a corporation the right to do business upon certain terms, and these terms it can change or alter or entirely take away from the corporation, if it sees fit to do so, under the reserved power to amend, alter or repeal its charter. It is, however, difficult to see upon what theory it can in the exercise of

its reserved power take from the corporation anything more than what it has given. The roadbed west of Twentieth Street, Omaha, and its use were acquired by the exercise of the corporate powers of the Company, and were property in which it had a vested right which could not be taken from it, and we confidently submit that on principle and under the authorities cited, the power reserved to the government to amend, alter or repeal the Union Pacific charter is limited to an amendment, alteration or repeal of that which was granted by the government, and did not give Congress power to confiscate property which was acquired as a result of the exercise of the franchise and powers given the Railroad Company by the United States and which had been previously mortgaged to secure its bonds.

We, therefore, respectfully submit that the appellant when it purchased at foreclosure sale the property, which had been mortgaged to secure the bonds, unquestionably purchased the right to use the tracks west of 20th street, Omaha, as it pleased and can not be compelled to share the use thereof with any other road. In other words the appellant stands in the shoes of the bondholders and acquired what rights they had in the security for their bonds, and as we have shown before, their right and the right of their mortgagor to the use of such tracks at the time of the execution of the mortgage was absolute and unqualified and in no way subject to the use thereof by any other road and could not be subsequently taken from them without their consent.

## THIRD POINT.

**The appellant under the foreclosure of the mortgage of March 1, 1865, acquired the properties of the old company free and clear of any lien, charge or duty, of or to the United States, under any act of Congress, except as specified in the decree of foreclosure.**

After the organization of the Union Pacific Railroad Company, by the government of the United States, under the Acts of July 1, 1862, and July 2, 1864, there was placed upon the line of the Company what is known as the Union Pacific First Mortgage of March 1, 1865, which is referred to on page 592 of the Record, Evidence, Vol. II., herein. In said mortgage and as security for the bonds issued thereunder the following-described property was mortgaged:

> "All and singular the railroad and telegraph of the said party of the first part [the said Union Pacific Railway Company] heretofore constructed or hereafter to be constructed, from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms and provisions of said Acts of Congress, to wit, at the City of Omaha, in the Territory of Nebraska; thence, as provided in said Acts of Congress, through the territories of the United States to the western boundary of the late Territory of Nevada, together with all its lands, tenements, hereditaments, rights of way and easements, acquired or appropriated, or which shall be hereafter acquired or appropriated, for the purpose of a right of way for a single, double or other track railroad and telegraph lines, and for depots, engine-

houses, car-houses, station-houses, warehouses, machine shops, superstructures, erections and fixtures being necessary for the use of said railroad and telegraph, and also all and singular the franchises now owned, possessed or acquired or which shall be hereafter owned, possessed or acquired by the said party of the first part, for the purpose of building and operating said railroad and telegraph above specified and described; and also all the rails, depots, yards, engine-houses, car-houses, station-houses, warehouses, machine shops, workshops and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired, by said party of the first part, necessary to said railroad and telegraph line, or the running and operating the same."

This description would include every bridge and every foot of property from the initial point upon the eastern bank of the Missouri River westward so far as the line ran. As has been before shown, this bridge was part of the road as an entirety, and its construction was commenced in the year 1869, under the original grant from Congress.

"If we are correct in this conclusion, it seems to be clear that the bridge over the river, built by the railroad company, is a part of their railroad, and required by law to be so operated. It was commenced in 1869 under the Acts of 1862 and 1864."

Union Pacific R. R. Co. vs. Hall, 91 U. S. 343, 352.

"That said railroad company finally determined to build a permanent railroad bridge across said river between Omaha and Council Bluffs at the

place where the present bridge is located, and commenced work thereon or in preparation therefor in the latter part of the year 1868, and during the year 1869" (Master's Report, Record, Evidence, Vol. II., pp. 584, 585).

"That said railroad company acquired lands for its terminals and bridge approaches in Council Bluffs, in about the year 1866, which terminal grounds are the same as those upon which the present terminal station of said railroad is situated, and that thereafter and during the period of the construction of said railroad and until a permanent bridge was constructed across the Missouri River as hereinafter stated, said railroad company received and delivered freight and passengers to and from its line of railroad at its station in Council Bluffs, in the State of Iowa, by means of railway tracks from said station to the easterly bank of the Missouri River, and thence across said Missouri River to connections with its track constructed as aforesaid on the westerly bank of said river, at various points from the point of the commencement of construction hereinbefore referred to, to a point about two and one-half miles southerly from said point, and that the transfer across the Missouri River was effected by means of ferry boats during the season when such boats could be operated and used, and by means of tracks resting upon temporary piling during the winter season of each year" (Master's Report, Record, Evidence, Vol. II., p. 584).

After the First Mortgage was placed upon the property and road as an entirety, and after the commencement of the construction of the bridge, as hereinbefore mentioned, and after the sale of all the First

Mortgage Bonds (see opinion of Judge Sanborn, Record, Evidence, Vol. I., p. 352), it was thought that additional funds would be necessary to complete the construction of the bridge, and so a supplemental mortgage was placed upon the bridge and appurtenances, and money was raised thereby and the bridge completed. The bond issue was made under the Act approved February 24, 1871.

In the foreclosure proceedings under which the present Union Pacific Railroad Company acquired its title to the property, it was decreed that under the First Mortgage of 1865, heretofore referred to, the mortgagees were entitled to a foreclosure of their said mortgage as against all other outstanding interest, but in the exercise of the equitable jurisdiction of the court, it was decreed that the Bridge Mortgage should not be cut out as a lien upon the bridge and appurtenance commonly referred to as the Bridge Divisional, but that the purchasers should assume this Bridge Mortgage indebtedness. So that the Union Pacific Railroad Company obtained the absolute fee title to the entire system subject to the payment of the Bridge Mortgage bonds.

By this sale and purchase the present Union Pacific Railroad Company received in fee whatever interest was granted to the mortgagees under the original First Mortgage of 1865, and as heretofore outlined, this was the absolute right to the entire line of the Union Pacific Railroad, from its eastern terminus in Iowa westward, including the bridge, free and untrammeled from any subsequent liens or burdens imposed either by the original Union Pacific itself or by any governmental law.

The language of the decree is as follows (Record, Evidence, Vol. II., p. 752):

"It is further ordered, adjudged and decreed, that in default of such payment by the defendant the said The Union Pacific Railway Company, or by some one claiming under it, or by some one for its account, or by some of the defendants herein, within the time directed as aforesaid, all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock and property of every kind and description embraced in and covered by said First Mortgage of November 1st, 1865, shall be sold as hereinafter directed, and all the right, title, estate, interest and equity of redemption of the said defendant The Union Pacific Railway Company and of all persons claiming or to claim, under it, and of F. Gordon Dexter, and Oliver Ames, 2nd, Trustee, and of the United States of America, and of each and every defendant in this cause, of, in or to the said railroad, telegraph, franchises, rolling stock and property, and every part and parcel thereof, embraced in and covered by said First Mortgage of November 1st, 1865, shall be forever absolutely barred and foreclosed saving only the rights and title of the American Loan and Trust Company, Trustee, of the said Equipment Trust Indenture of October 1st, 1887, and the rights and liens of the trustees of the Omaha Bridge Mortgages of April 1st, 1871, and September 27, 1871, and the Omaha Bridge Renewal Mortgage of October 1st, 1885, and saving and excepting the right of the government to have the preference at all times" (Record, Evidence, Vol. II., pp. 752, 753).

"The purchaser or purchasers and his or their

successors or assigns, shall, after such delivery of the premises and property, hold, enjoy and possess the same and all the rights, privileges, immunities and franchises thereto appertaining, with the right to own, hold, enjoy, maintain and operate the said railroad and property as fully and completely as the Union Pacific Railroad Company held, owned and enjoyed the same at the time of the execution of the said First Mortgage or at any time thereafter, and as fully as the defendant The Union Pacific Railway Company has heretofore held, owned or enjoyed or now holds, owns or enjoys the same, and the purchaser or purchasers, and his or their successors and assigns, shall thereupon be entitled to have and to hold the said premises so conveyed, by a full, absolute and indefeasible title, freed and discharged from all the mortgages, liens, claims and charges of each and every defendant herein and of all parties to this cause, saving and excepting the right and title as hereinbefore defined of the American Loan and Trust Company, as trustee of the Equipment Trust Indenture of October 1st, 1887, and the mortgage lien, claims and charges of the trustees of the Omaha Bridge Mortgages of April 1st, 1871, and September 27th, 1871, and of the trustee of the Omaha Bridge Renewal Mortgage of October 1st, 1885, and the holders of the outstanding and unpaid bonds issued under and secured by said bridge mortgages respectively, and saving and excepting also the right of the government," etc. (Record, Evidence, Vol. II., p. 761).

To ascertain the title which the present owners of the road possess, it is necessary to turn to the final decree as handed down by Judge SANBORN. Let us see

how far the Court imposed these Bridge Mortgages as a burden upon the defendant company. Turning to page 731 of the Record (Evidence, Vol. II.), we find the following:

> "And said First Mortgage is a lien subordinate and inferior to the lien of the Omaha Bridge Mortgage of the Union Pacific Railroad Company to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as trustees, dated the 1st day of April, 1871, and to the indenture supplemental thereto, dated the 27th of September, 1871, and to the Omaha Bridge Renewal Mortgage executed by the Union Pacific Railway Company to the Central Trust Company of New York, as trustee, dated the 1st day of October, 1885, upon, to the extent and in respect of the premises embraced in and covered by the said Bridge Mortgages, and *to the extent of the indebtedness thereby secured*, as hereinafter found to be outstanding and unpaid."

Here in so many words is a distinct finding as to how much of this Bridge Mortgage is foisted upon this defendant company in the decree, and the court, in order to cut out all such complications, restrictions and impositions as appellee is attempting to impose upon the defendant, has limited the liability merely to "*the extent of the indebtedness* thereby secured."

In effect, the decree thereby cuts out all other conditions which it has been argued followed the granting of the permission by the United States to place upon the Bridge Division this Bridge Mortgage.

Quoting further from the Decree (Record, Evidence, Vol. II., p. 732):

"That said First Mortgage of November 1, 1865, is with the exceptions last above stated and decreed [or with the exception of a lien to the extent of the indebtedness secured by the Bridge Mortgage], a valid and subsisting first mortgage and lien superior and paramount to any and every lien, estate, right, title, interest or claim, of any person, party or corporation whomsoever, including the United States of America, upon all the railroad, telegraph, premises, rights, franchises, lands and property described in said mortgage, including the railroad, right of way, and railroad property of the Union Pacific Railway Company extending from the eastern terminus of the Union Pacific Railway on the east line of the said Railway Company's property between Twelfth Avenue and Thirteenth Avenue in Council Bluffs, Iowa, in a westerly direction to Twentieth Street in Omaha, Nebraska, including the railroad and railroad bridge across the Missouri River and extending from the initial point, etc."

So that the Court, by its decree, specifically cut out every right of every person whomsoever, except the right of the bondholders under the Bridge Mortgage to have their bonds paid in due course.

Turning to page 429 of the Record (Evidence, Vol. I.), we find that there was conveyed by the Master's Deed:

"All the railroad, right of way, and railroad property of the Union Pacific Railway Company extending from the eastern terminus of the Union Pacific Railway on the east line of the said Railway Company's property between Twelfth Avenue and Thirteenth Avenue in Council Bluffs, Iowa,

in a westerly direction to Twentieth Street in Omaha, Nebraska, *including the railroad and railroad bridge across the Missouri*, * * * (Page 441.) And subject to and saving the lien of the Omaha Bridge Mortgage of the Union Pacific Railroad Company, * * * upon and in respect of the premises embraced in and covered by said Bridge Mortgages, and *to the extent of the indebtedness* thereby secured and in said decrees found to be outstanding and unpaid."

So that we find both in the decree itself and in the deed, that an absolutely clear title to the property is given to the purchasers, free from all claims, rights or reservations in favor of the United States Government or any other party whomsoever, and not subject to the bridge mortgages, but subject to the payment of the indebtedness secured by said bridge mortgages and found by the decrees to be outstanding and unpaid.

Great stress has been laid by counsel for appellee upon the decision in the case of *Joy vs. St. Louis*, 138 U. S., 1, as bearing on the case at bar. The cases, however, are easily and clearly distinguishable. In principle there is absolutely nothing in common between them, as bearing on the rights of the purchasers at foreclosure sale.

In the Joy case the mortgage was not made until long after the tripartite agreement had been entered into, and in fact in the mortgage itself reference is made, directly or indirectly, as the Court distinctly holds:

"Therefore, the Wabash Company, the mortgagees, and purchasing committee must be held to

have had notice of the covenants and conditions of the tripartite agreement *prior to the execution of the mortgage*, and are bound by them, whether the covenants be or be not strictly such as run with the land" (p. 35).

(p. 37) "Thus this deed refers to the contract of August 11, 1875, between the County Company and the Kansas City Company, and to the terms thereof; and the Kansas City Company took its title subject to the terms and conditions imposed upon the County Company by the tripartite agreement. This reference to the terms and conditions on which the right of way mentioned in the deed was granted to the Kansas City Company put all the parties to the deed, and their assigns, on inquiry as to the terms of the contract by which such rights of way were granted, and led up to the provision in the agreement of August 11, 1875, between the two companies, which referred to the tripartite agreement in the following language:

* * * * * *

"Being thus chargeable with notice of the contents of the contract of August 11, 1875, between the County Company and the Kansas City Company, *the mortgagees and purchasing committee were chargeable also with notice of the tripartite agreement*, to which it referred; and they *purchased subject to the terms on which the right of way was granted.*"

We desire to explain our position a little more fully in reference to the rights which defendant claims it acquired as purchaser under the foreclosure of the First Mortgage of March 1, 1865, and to do this we deem it necessary, at the risk of being tedious, to go over in de-

tail the matters in connection with the issuance of said First Mortgage Bonds and the passage of the Bridge Mortgage Act of 1871.

The Pacific Railroad Acts of 1862 and 1864 authorized and required the original Union Pacific Company to construct a railroad from the western boundary of the State of Iowa westward. It has been held in the *Hall case*, 91 U. S., 343, that the Act of 1862, by implication, and the Act of 1864, expressly authorized the construction of the bridge across the Missouri, and that said bridge was built under the authority of said acts, and was part of the Union Pacific Railroad authorized by said acts.

On March 1, 1865, a First Mortgage was made covering all the railroad line, then constructed and to be constructed and of course necessarily this included the bridge when constructed. Under this mortgage $27,000,000 of bonds were issued, and all were sold by 1869, and the construction of the bridge was commenced in 1868–69. It is our contention that by the issuing and recording of said First Mortgage, the bondholders purchasing the bonds secured thereby, acquired a first lien on all the railroad, including the bridge when constructed, the value of which lien could not be impaired or depreciated in any way by the government or any one else without their consent, and that thereafter the Government could not, as to said bondholders, impair their security by placing any additional burden on the bridge, which had not been imposed prior to March 1, 1865, in the way of making the bridge subject to be used by any railroads desiring it, or in any other way,

*without the consent and acquiescence of* said bondholders.

The next step was this: The Union Pacific Company, running short of funds, went to Congress and asked authority to place a separate mortgage on the bridge and appurtenances, making it a first lien, and to borrow money on said mortgage. Congress, by the Act of February 24, 1871, granted this authority, and it was in this Act of 1871 that this reference was made to the Act of 1866, whereby it is claimed the bridge is subject to use by other railroads. Of course, as explained in the prior branch of this argument, we contend that such was not the intention of Congress, and that by said Act not even the original Union Pacific Company was bound to allow the use of its bridge to other railroad companies. But now, irrespective of that question, we contend that whether Congress intended to so burden the bridge as to the original Union Pacific Company, it did not intend to, nor did it have the power to so burden it as to the lien and vested rights of the First Mortgage bondholders. We will admit that as between Congress and the Union Pacific Railroad Company, the bridge could be so burdened by agreement between them, but we contend as to the First Mortgage bondholders and their vested rights as to the security of the bridge, any such proceeding, unless with their *consent*, would be entirely void and not binding on them; that is to say, Congress could not without the consent of the bondholders, impair or affect in any way their security which they had acquired on the *whole* line of railroad including the bridge, by the mortgage of 1865, by placing any prior

lien on the bridge or by imposing any further conditions on it, such as use by other roads, which of course would depreciate its value to them as security.

The next step was the foreclosure in 1898, of the mortgage of March 1, 1865, by which the present Union Pacific Railroad Company acquired its title to the railroad. The terms of sale are more fully referred to above. In that foreclosure there was a contest as to the priority of the original First Mortgage of 1865, and the Bridge Mortgage of 1871, as to the bridge and appurtenances, and the Bridge Mortgage won out. The whole line of road including the bridge was ordered sold, to satisfiy the mortgage of 1865, but subject to the payment of the Bridge Mortgage to the extent of the amount thereof.

Irrespective of the question as to the Bridge Mortgage being a first lien on the bridge, which is not in this case, we now come to the question as to whether the reference to the Act of 1866, in the Act of 1871 (assuming for the sake of argument it was intended thereby to make the bridge open to the use of other roads), was binding as to the First Mortgage bondholders. That question has not been adjudicated and is still an open one.

We admit that Congress could depreciate the lien of the United States as to the subsidiary Bonds by imposing further burdens on the bridge, as making it subject to the use of other roads, if it so desired, and we also admit that the Union Pacific Railroad Company could agree to depreciate the value of its bridge by accepting the condition that it might be used by any other road

desiring it, if it desired, but we contend that as to the *lien and vested right* which the First Mortgage bondholders acquired by the mortgage of 1865, the value of the property covered by this lien, which included the bridge, could not be impaired or depreciated in any way by Congress or any one else, without the consent and acquiesence of said bondholders. That is to say, Congress could not, as to the bondholders, without their consent, impose the burden on this bridge of permitting it to be used by all other roads (as it claimed it endeavored to do by the Act of 1871) and thus depreciate to that extent the value of the bondholders' security and therefore, as to the bondholders, that provision would be of no force and not binding.

This being so, the purchaser at the foreclosure sale, the new Union Pacific Company, would not be bound by that provision. The new company was not a *purchaser from the old company*. What it did do was to buy the property subject to the burdens that were on it when the First Mortgage was given in 1865, it simply stepped into the shoes of the bondholders, and no burdens on the property which would not be binding on the bondholders would be binding on the present Union Pacific Company. It is very clear that this must be the rule. If a person, after mortgaging property, could subsequently burden it with easements and conditions which would be binding on the mortgagee, the mortgagor could so burden it that the security of the mortgagee would be practically, if not totally, destroyed. We do not believe that any such doctrine has ever been sustained by any court.

It has been urged that the whole matter of the Bridge Mortgage Act was done for the benefit and protection of the First Mortgage bondholders equally with the Union Pacific, and that therefore they cannot complain and will be held bound. But this argument has no force. If it was desired to help the bondholders by doing anything which bore on their vested rights in the road, they should have been called in and consulted and given the opportunity to be helped or not as they desired. There is no principle of law which provides for compulsory assistance in a case of this kind. It would be a dangerous precedent to establish, and the courts will not countenance it. Looked at from any standpoint, the conclusion is irresistible that the provisions in the Act of 1871 were not binding or of any force and effect as to the First Mortgage bondholders, nor can they affect the rights of the purchaser, the present Union Pacific Railroad Company.

We repeat that in the main case relied upon by appellee on the question of successorship, *Joy vs. St. Louis*, *supra*, the facts were totally different from those in the case at bar. In the Joy case all the matters in controversy, the agreements, deeds, etc., were done, entered into and placed on record long prior to the execution of the mortgage, and the Court held there was notice of all the matters involved to the mortgagees before they accepted the mortgage as security. In our case the mortgagees had no notice, at the time of accepting the mortgage, of any provisions with reference to the use of the bridge. They took the mortgage on the bridge free and clear of any such provision, and

they cannot be held bound by any subsequent provision to that effect, if there was any such.

In the case of Toledo, etc., R. R. Co. v. Hamilton, 134 U. S., 296, it was held:

"A recorded mortgage, given by a railroad company on its road bed and other property, creates a lien whose priority cannot be displaced thereafter either directly by a mortgage given by the company, or indirectly by a contract between the company and a third party for the erection of buildings or other works of *original construction*. * * *

"The priority of a mortgage debt upon a railroad has been sometimes displaced in favor of unsecured creditors, when those debts were contracted for keeping up a railroad, *already built*, as a going concern; but those cases have no application to a debt contracted for *original construction*" (Syllabus).

Again, at page 301, the Court said:

"There was no statute in force *at the time the mortgage was executed*, giving any priority to subsequent mechanic's liens; and by the mortgage the mortgagee took its *vested priority*, beyond the power of the mortgagor or the *legislature* thereafter to disturb."

"Acting as he did with a full knowledge of all the circumstances, he has no right to complain if his agreement is less remunerative than it would have been if the *bondholders* had joined with the company in making the contract. No *effort appears to have been made to induce them to become a party to the agreement*, and it is now too late to remedy the oversight. Conceding the general rules of law to be as here laid down, still an attempt is made by the respondents to maintain that railroad

mortgages made to secure the payment of bonds issued for the purpose of realizing means with which to construct the road, stand upon a different footing from the ordinary mortgages to which such general rules of law are usually applied. Authorities are cited which seem to favor the supposed distinction, and the argument in support of it was enforced at the bar with great power of illustration, but suffice it to say, that in the view of this court the argument is not sound, and we think that the weight of judicial determination is greatly the other way. (Citing cases)."

*Dunham vs. Ry. Co.*, 1 Wall., 254 (257).

Quoted in *Toledo R. R. Co. vs. Hamilton*, *supra*.

The fact that part of a road was entirely built by money raised on a subsequent mortgage, does not give it priority over prior mortgages which lawfully cover the whole road.

*Galveston R. R. Co. vs. Cowdrey*, 11 Wall., 459.

An agreement resting wholly in contract cannot be enforced against a new corporation which has purchased the property of a former one upon foreclosure sale.

*Sullivan vs. R. R. Co.*, 94 U. S., 806.

On this question of successorship, counsel for appellee seem to base their argument on the theory that the present Union Pacific Railroad Company is a *purchaser* from the old Union Pacific Company. This is entirely erroneous. The present Union Pacific Company is a purchaser of all the rights and properties originally *mortgaged* by the old Union Pacific Company to the

First Mortgage bondholders. As soon as the mortgage was made, the bondholders acquired vested rights which could not be changed or impaired by any subsequent acts or contracts of the mortgagor or by any subsequent acts of the legislature. The present Union Pacific Company does not succeed to the rights of and step into the shoes of the old Union Pacific Company. It derives its rights through the bondholders, and whatever rights the bondholders acquired by the mortgage, the present Union Pacific Company possesses by virtue of the foreclosure sale.

Counsel for appellee in their brief in the court below said:

> "Covenants creating an easement which do run with the land are binding upon all *purchasers*, and covenants not running with the land are always binding upon purchasers with notice, provided they have reference to the use of the property."

If it is admitted that it is true with reference to *purchasers from the owner* of the property, it certainly cannot be true that this rule would apply in the case of a purchaser at a mortgage sale, who acquired the rights and properties which had been mortgaged, that is to say, that any burdens or easements placed on the land by the owner subsequent to the giving of the mortgage, would have any effect as to one acquiring said mortgaged rights and properties under mortgage foreclosure sale. If this were true, the mortgagee would never know what security he was getting under a mortgage. As we have stated above, if a mortgagor could, subsequent to the giving of a mortgage,

affect the mortgagee's rights by placing burdens and easements on the property mortgaged, it is very apparent that the mortgagee's security might thereby be very appreciably impaired, if not entirely wiped out. The mere statement of the proposition will show its fallacy.

An examination of the cases cited by counsel for complainant in their brief in the court below, will show that they have no application to the case at hand. In the case of *Chicago, M. & St. P. Ry. Co. vs. Chicago*, 183 Ill., 341, there is no such question as is involved in this case. In that case the railroad company was a *purchaser direct* from the old company, and not a purchaser at foreclosure sale of rights previously mortgaged, and in addition the very right and power *originally granted* to build and operate the railroad in the street was hedged in with conditions, which the court held were binding on the purchaser. That is, the only right the railroad company had in the street was derived from the ordinance which imposed such conditions. In other words the ordinance was a link in the chain of title of the company to the use of the street, and without it the Company would be a trespasser; hence *deriving its title* through the ordinance it was bound by its provisions.

Again, in the case of *Parker vs. Nightingale*, 6 Allen, 341, Nightingale knew at the time he acquired the lease that the lessor, the party through whom he derived his title, was bound not to run a restaurant on the premises, and that his power as lessee, in connection with the premises could be no greater than that of his lessor, hence he was enjoined by the Court from carrying on said business on the premises.

So, in the case of *Kirkpatrick vs. Peshine*, 24 N. J. E., 206, the party, who was enjoined from erecting a building within twelve feet of the street, was a purchaser of the fee title direct, subsequent to the recording of the agreement that the property should not be so used. He did not purchase the rights of the mortgagee to said property, acquired prior to the recording of the agreement.

Counsel quoted from the opinion of Lord Justice Knight Bruce, in the case of *De Mattos vs. Gigson*, 4 De G. J., 282, as follows:

> "'Reason and justice seem to prescribe, that at least, as a general rule, where a man, *by gift or purchase*, acquires property from another, with knowledge of a *previous* contract, lawfully, and for a valuable consideration, made by him with a third person, to use and employ the property for a particular purpose in a specified manner, the acquirer shall not, to the material damage of the third person, in opposition to the contract, and inconsistently with it, use the property in a manner not allowable to the giver or seller.'"

We have no dispute with this rule. It will be noticed that the rule as announced applies to the case where a man, by *gift or purchase*, acquires property from *another*, with knowledge of a *previous* contract. This is in line with our contention. The Union Pacific Company did not acquire the road and bridge "by gift or purchase from another with knowledge of a previous contract," within the meaning of the rule as laid down. What it did was to purchase the rights and properties which had been mortgaged long prior to the placing of

this alleged burden on the bridge. It did not acquire this property "by gift or purchase from another" (meaning the owner). It purchased the property at mortgage foreclosure sale and procured its title from the court.

We have thus far in this branch of our argument referred only to the effect of the provisions of the Act of 1871 on the present Union Pacific Company, and have not discussed the effect of the terms of the contract between the City of Omaha and the old company on the present company. We do not deem it necessary to discuss the question of the effect of that contract on the new company, but we contend that in the same way the new company would not be bound by the provisions of said contract, even if they could be enforced against the old Union Pacific Company. We contend that that was a personal contract between the City of Omaha and the old Union Pacific Company, in nowise binding on the purchasers of property at foreclosure sale under a mortgage made long prior to the execution of said contract, and that the new company took all the property of the old company free and clear of any liens, burdens and easements placed thereon by the old company subsequent to the date of the recording of the mortgage, and that even if the old company could have been forced to permit appellee to use its bridge, the new company cannot.

In passing upon this branch of the case, the Circuit Court of Appeals bases its holding against our contention on the argument that the original Acts of 1862 and 1864 gave Congress the right to alter, amend or repeal the acts. But the Court seemed to have over-

looked the provision that this could only be done, "*having due regard for the rights of the parties.*"

The first mortgage was made, relying upon conditions as they then existed. Imposing obligations such as appellee is contending for certainly impairs the rights of the mortgagees, otherwise the present Pacific Company, who succeeded by purchase at the foreclosure sale to their rights, would not be contesting these claims so strenuously in the courts. The Circuit Court of Appeals holds that so long as the Pacific Company is not deprived of the use of its bridge by this *duty* to permit other railway companies to enjoy the joint use of the bridge no vested rights of the mortgage bondholders are impaired.

See Opinion, Record Pleadings, page 288.

To have the right to say to one company it might use the bridge and to another that it cannot, but must transfer its freight and passengers at Council Bluffs, is not that a valuable right which this holding impairs? Is not a clear right and title, impaired by any duties or obligations, a valuable right and title? This is what the first Pacific Company had. This is what the first Pacific Company mortgaged.

Does not the imposition of this Company upon the Pacific Company impair that right? It seems to us to be so unquestionable as to be beyond argument. The Circuit Court of Appeals undoubtedly lost sight of the fact that no change could be made which interferes with vested rights.

## FOURTH POINT.

**The Mason City & Fort Dodge Railroad Company was not entitled to use and occupy any of the premises of the appellant the Union Pacific Railroad Company upon the terms of any of the contracts between that Company and other railroads.**

The lower court in its decree gave to the appellee the same rights which the Pacific Company had granted by contract to the Rock Island and Milwaukee companies. This was manifestly error and without any possible authority under the statutes relied on by appellee.

An examination of the Rock Island contract and the decree will show this Court that the decree was taken bodily from the contract with certain additions thereto, which were suggested by a contract entered into between the Pacific Company and the Northwestern Company.

Below will be found the important provisions of the decree and contract, placed side by side in parallel columns for the purpose of examination and comparison:

| ROCK ISLAND CONTRACT. | DECREE. |
| --- | --- |
| "the full, equal, joint possession and use of its main and passing tracks now located and established, or which may hereafter be located and established, between the terminus of said tracks in the City of Council Bluffs, in the State of Iowa, to a line drawn at a right angle across said tracks, within one and one-half (1½) miles southerly | "the full, equal and joint use of the main and passing tracks of the Union Pacific Railroad Company, now located and established, or which may hereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stock Yards railroad and the other rail- |

of its passenger station at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri River between the City of Council Bluffs and Omaha;

roads connecting with the Union Pacific Railroad at South Omaha, in the State of Nebraska, including the bridge over said tracks extend across the Missouri between the cities of Council Bluffs, Iowa, and Omaha, Nebraska;

connection with the Union Depot tracks in Omaha;

also the connection with, and the tracks pertaining thereto, of the general passenger station of the said Union Pacific Railroad in Omaha, and said passenger station, and all tracks and facilities connected therewith;

the side or spur track leading from its main track to the lower grade of the Pacific Company's sidings and spur tracks in Omaha, and such extensions as may be hereafter made;

also a connection with the side or spur track leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made;

and side tracks in Omaha on which to receive from and deliver to the party of the second part [Rock Island Company], freight that may be handled through the warehouses or switched by the party of the first part [Pacific Company];

also a connection with the side tracks in Omaha on which to receive from and deliver to said Union Pacific Railroad Company freight which may be handled through the warehouses, or may be switched by the said Union Pacific Railroad Company;

the connections with the Union Stock Yards tracks in South Omaha, and conveniently located grounds in South Omaha, on which the party of the first part [Rock Island Company] may construct, maintain and exclusively use a track or tracks, aggregating three thousand feet in length, for the storage of cars and other purposes;

also the connections with the Union Stock Yards tracks in South Omaha, and with the tracks of all other railway companies, which now or may hereafter connect at or near South Omaha with the tracks of the Union Pacific Railroad Company hereinbefore described, each and all, to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company, and C. & N. W. Ry. Co., C. M. & St. P. Ry. Co., and C. R. I. & P. Ry. Co. as appears by the contracts in evidence in this case, and the depot contract, and the supplemental contract between the same parties, being Exhibits Nos. 6 and 7, attached to the bill of complaint herein, without preference or discrimination.

That the Mason City & Fort Dodge Railroad Company is entitled to connect its tracks with the said tracks of the Union Pacific Railroad Company at the point in Council Bluffs, and in the manner shown upon the Complainant's Exhibit No. 4d, and forever maintain and operate the same.

The Rock Island Company shall have the right to make such connections between its own tracks and the leased tracks of the Pacific Company as shall be necessary or convenient in the operation of its own line or lines in connection with such leased tracks; or to the conduct of its business as a common carrier.

That the Mason City & Fort Dodge Railroad Company is entitled to make such connections between tracks which it now owns or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company as shall be necessary or convenient in the operation of its own line, or as may be necessary or convenient in its business as a common carrier, and forever maintain and operate such connection (Record, p. 261).

Appellee bases its right to relief upon the Act of 1871, as construed by this Court in the Rock Island case.

Turning to that case, what do we find it holds under the act in question? "The determination of the existence of the power to grant *running rights.*"

> "The Pacific Railroad Acts * * * imposed * * * the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and the tracks between Council Bluffs and Omaha, and we think that South Omaha was included."

The opinion holds that the right to use the bridge would include the right to use the approaches thereto, the tracks to the depot (which tracks would include only such tracks as connect the bridge with the depot), the depot itself, and the tracks connecting the depot

with South Omaha. That is all. We have hereinbefore discussed appellee's right to go to South Omaha, and so will pass that in the present discussion. Giving appellee everything the Supreme Court in the Rock Island case held the Rock Island Company entitled to under the Pacific Railroad Acts, then appellee would be entitled to have "the use of the bridge, the approaches, tracks, depots and other facilities for the public accommodation." (Opinion, p. 588.)

It is further stated in said opinion:

> "A railroad bridge can be of no use to the public unless united with necessary appurtenances" (p. 588).

This depends entirely upon what is to be included in the words "necessary appurtenances." The Supreme Court, referring to the words "necessary appurtenances," has held that this includes "approaches, tracks, depots and other facilities for the public accomodation." We earnestly deny this proposition. Railroad bridges are often used by carriers, who are not the owners thereof, for the purpose of crossing rivers and making connections merely, and the bridges can be and are of use to the public when only the bridges themselves and the approaches thereto are used by said carriers, and without the use of depots and other facilities. It does not necessarily follow that such carriers are entitled to depot and other facilities either connected with or distant from the bridge. It is common knowledge that a number of railroad bridges in this country are used by other railroad companies than the owners, which other railroad

companies do not ask for nor receive any depot or other facilities in connection therewith.

Taking this very bridge in question, the Burlington road uses the bridge proper and its approaches, but has no connection whatever with the Union Pacific tracks, or depots either in Council Bluffs or Omaha, or other facilities. The Burlington Company has a depot of its own in Omaha, and it is clear that the use of the Union Pacific depot there is not at all necessary or appurtenant to its (the Burlington Company's) use of the bridge.

But the opinion says the Act refers to "the tracks and depots required to perfect the same." That must mean the bridge, and cannot possibly refer to the Omaha and South Omaha depots and the tracks necessary to perfect these depots. It was not found necessary to erect any depots to perfect the bridge, nor have any ever been erected. But granting to appellee everything that the Rock Island case gives to it, placing any strained construction possible on the language above quoted, where does the Court find authority to give to appellee the "full, equal and joint use of the main and passing tracks of the Union Pacific Road"? Why should appellee have the full and equal use with the Pacific Company of the main tracks, and why should it have any use of the passing tracks? And the decree gives appellee not only such tracks as the Pacific Company now has, but all which it may hereafter locate or establish between the eastern terminus of its tracks in Council Bluffs to a connection with the Union Stock Yards Railroad in South Omaha, and all the other

railroads connecting with the Union Pacific at South Omaha. The decree gives appellee so much that the bridge becomes merely an incident, and almost overlooked, but is finally tacked on in the following language, "including the bridge."

The decree makes the bridge nothing but an appurtenance to connection with South Omaha. Under what theory is the Pacific Company required to connect appellee's tracks with the tracks of all the other railroads in South Omaha? Will the Court hold that this obligation is an "appurtenance" to a bridge miles away?

The court in its decree lost sight of the bridge entirely, as well as any construction of the Pacific Bridge Acts, because it had in mind always the Rock Island contract, which granted "connections with the Union Depot tracks in Omaha." The decree even goes far beyond the contract, for it provides (Record, p. 261),

> "also the connection with, and the tracks pertaining thereto, of the general passenger station of the said Union Pacific railroad in Omaha, and said passenger station, and all tracks and facilities connected therewith."

Then the decree, taking up the text of the contract and almost in the identical words thereof, provides (Record, p. 262),

> "Also a connection with the side or spur track leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made; also a connection with the side tracks in Omaha on which to receive from and deliver to said Union Pacific Rail-

road Company freight which may be handled through the warehouses, or may be switched by the said Union Pacific Railroad Company."

The decree then takes up the situation at South Omaha and by a broad sweeping provision incorporates by reference all the contracts the Pacific Company has ever made with other companies, and finally, still using the Rock Island contract as a model, copies the final provision therein almost word for word in the following language:

> "That the Mason City & Fort Dodge Railroad Company is entitled to make such connections between tracks which it now owns or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company, as shall be necessary or convenient in the operation of its own line, or as may be necessary or convenient in its business as a common carrier, and forever maintain and operate such connection."

What will be the effect of all this? The answer is, that undoubtedly the Mason City Company, with this decree, will be able to make and enforce demands upon the Pacific Company which other railroad companies, under their contracts, could not possibly demand. For illustration, the Pacific Company might have a track running alongside of business houses and industrial concerns; under the decree the Mason City Company could build a track of its own between such concerns and the Pacific Company's track, and thus absolutely prevent it from conducting any operations or business with such concerns, and yet compel it to connect said

Mason City Company's track with the Pacific Company's track at either end.

If the Pacific Company builds a track to any part of the business district of Omaha, no matter at what cost and expense, that moment the Mason City Company demands connection with such track and proceeds to gather in the business by its historic methods. The duty of a court of equity is to protect vested rights, not destroy them; to stand as a shield against injustice which the courts of law cannot prevent. Instead of this, it is taking away from the appellant its right of contract and imposing burdens upon it which no board of directors, having in mind the best interest of their company, would dream of undertaking. The decree should have been drawn with due regard to the law of the case and not fashioned after an improvident contract which the predecessor of this company had entered into, and which this company was obliged to assume and carry out.

## FIFTH POINT.

**No necessity existed for the use by the Mason City & Fort Dodge Railroad Company of the bridge across the Missouri River, and there was therefore no equity in its bill of complaint.**

Since the building of the Union Pacific bridge conditions have changed very materially. The difficulty of getting across the Missouri River experienced by railroads terminating upon the eastern bank thereof and all such matters which were of great concern in the early 70's have been entirely obviated.

There are now in existence and in operation, connecting with the great trunk lines from the east, traversing the State of Iowa and crossing the Missouri River at or near Omaha, the following lines:

The Chicago, Milwaukee & St. Paul Railway, the Chicago, Burlington & Quincy Railroad, the Wabash Railroad, the Chicago, Rock Island & Pacific Railway, the Chicago & Northwestern Railway and the Illinois Central Railway.

Bridges span the Missouri from its junction with the Mississippi to its source, and between Council Bluffs and Omaha already three great bridges have been constructed and others are in contemplation. Two of these are intended for railroad travel—the Union Pacific and the Omaha Bridge & Terminal Company's bridge. Appellee does not have to depend upon the Union Pacific bridge or the building of a bridge itself to have free and perfect access to Omaha and South Omaha. The Omaha Bridge & Terminal Railway Company's bridge was built especially for the purpose of accom-

modating such railroads as appellee's. Appellee can cross the river and get into Omaha over that bridge just as conveniently as it can by means of the Union Pacific bridge. The crossing over the Terminal bridge presents no difficulties, for before appellee conceived the idea of compelling the Union Pacific to make an unwelcome contract, appellee had entered into negotiations with the Bridge and Terminal Company, had prepared maps and specifications showing connections, and had almost come to an agreement with that company for its entrance into Omaha. And the arrangement would have been a very appropriate one. That bridge is not used by many great trunk lines as is the Union Pacific and is not burdened with the enormous traffic which the Union Pacific bridge bears, in fact but a very small part of its capacity is used. There is no equity in the demand of appellee that it be allowed to come into Omaha over the Union Pacific bridge.

Mr. Samuel C. Stickney, General Manager of the Mason City and Fort Dodge Railroad Company, testified upon cross-examination (Record, Evidence, Vol. I., pp. 374–382) that the appellee had received a written proposition from the management of the Omaha Bridge and Terminal Company to take its trains from Council Bluffs, Iowa, across the bridge of the said Bridge and Terminal Company, and through to South Omaha; that said bridge company was prepared to make the necessary connections which would give the appellant practically all that could be accomplished by going over appellee's bridge and tracks, except that the latter way would be more convenient and satisfactory than the former. Mr.

Stickney also testified that that proposition had never been accepted nor rejected, and that if it had been accepted, they could have made arrangements with the bridge company to take their trains to South Omaha. This would give the appellee the same connections as are now enjoyed by the Illinois Central Railroad Company.

This testimony was not denied. It shows clearly that the appellee could make every point by connection with the Omaha Bridge and Terminal Company that it expects to make by trying to force itself upon the appellant against the latter's wishes.

How appellee can come into a court of equity and ask that the court shall force its unwelcome presence upon an objecting road, when all its objects and purposes can be accomplished by the use of an adjoining bridge, is beyond our powers of comprehension. If it had a bare, naked, legal right to cross this bridge, we would have nothing to say, but appellee, by coming into equity admits that the law gives to it no such right, and it attempts to force itself upon the appellant under the cloak of equity. It should take the willing way open to it rather than force an unwilling entrance into Omaha by means of a court of equity.

Take the Joy case, for instance, upon which counsel strongly relied in the lower court. In that case questions concerning a public park were involved. To preserve the rights and protect the interests of the public, the park must be preserved as a whole, and not cut up by innumerable tracks of railways desiring entrance into a great city. A railroad company is granted a right of way

through the park, under the agreement that all other roads desiring to enter the city may use such right of way and thus save other tracks through the park. A railroad seeks entrance and the owners of the right of way attempt to prevent it from entering. Its only other practical recourse is to condemn a way through this public park. There is no adjacent line paralleling this right of way over which the new company could just as conveniently run its trains. It must either use the original right of way or cut a new way through the park. Hence, it could consistently come into a court of equity and ask for an order allowing it to run over the only available right of way. Even though there was not in this case another company ready and willing to provide complainant with an entrance into Omaha, still the claims of the appellee in this case to the consideration of a court of equity would not compare with those of the complainant in the Joy case, since here another bridge could be built. The only objection on the part of the appellee to this is the expense, and equity will not force one company into a distasteful contract simply to save expense to another, at any rate when no great public interests are involved. Hence, we think that every argument which is used in the Joy case from an equitable standpoint to compel the use of the right of way, is an argument in favor of the defendant in this case and against the claim of appellee seeking to inflict itself upon defendant.

Suppose that in the Joy case the evidence had shown that there was a second right of way through the park and to the Union Depot, owned by another railroad com-

pany, and said company was ready and willing to allow the Colorado company to use such right of way under the same terms on which it was endeavoring to use the Wabash right of way, would it be thought for a moment that any court of equity would have enforced specific performance of the agreement on the part of the Wabash company, when the complainant and the public would have been equally as well served by refusing the relief asked, and relegating the Colorado company to the use of the other right of way?

What reason has appellee offered for invoking these equitable powers? Its object can be accomplished in two ways, one by using the Terminal bridge, which is open to it, and the other by using the Union Pacific bridge, which is closed. It comes here and asks this Court to exercise its extraordinary equitable powers in its behalf for what purpose? To command the Union Pacific Company to throw open its closed bridge. What reason does it give for asking the exercise of this extraordinary power, and for not taking the way open to it? The answer must be, simply, because it *prefers* the closed way. This is not a reason which will commend itself to a court of equity. The mere exercise of an arbitrary preference does not appeal to the conscience of a Chancellor. Equity only interposes as a last resort and to prevent disastrous and irreparable injury. We confidently submit that no such case has been made out by appellee here.

We think none of the cases relied on by counsel on this point are parallel with the case at bar.

The case of *Chicago, R. I. & P. Ry. Co. vs. Union*

*Pacific Ry. Co.*, 47 Fed., 15, is clearly distinguishable. We quote from Judge BREWER'S opinion (p. 26):

> "But this is outside of the question before us. Returning to the case: Counsel contend that it is distinguishable from that of Joy vs. St. Louis, in that there was a great public interest to be protected which justified, as was mentioned in the opinion, the interposition of a court of equity. I think no such distinction exists. There is in this case a public interest as significant and deserving of protection. The testimony discloses that before this contract was entered into, the Rock Island had determined to build a bridge across the Missouri River at Omaha, and fill the Gap between Council Bluffs and Beatrice by its own line.
>
> "In conjunction with the Chicago, Milwaukee and St. Paul Railway Company, it had obtained from Congress a charter for the building of the bridge; and negotiations were pending to secure the capital, some two or three millions of dollars, with which to do the work. At that time *the officers of the Pacific sought the officers of the Rock Island and the St. Paul, and prevented the building of the new bridge by means of this contract.* If this contract had not been made, or it should not now be enforced, *two or three millions, at least, of additional capital, would be put into railroad and bridge construction;* and such an expenditure of money places an additional burden upon the public. * * * So, here, if the public can *prevent an increase* of railroad property *by the sum of two or three millions of dollars*, it saves to itself the burden which that additional expense would cast upon it. Further, a new line running into Omaha cuts up and destroys un-

necessarily a large amount of property. So in this, as in the case of Joy vs. St. Louis, there is a public interest at stake which justifies the intervention of a court of equity."

In the above case, as therein stated, the facts were that the Milwaukee and Rock Island roads were preparing to build a new bridge for themselves when the Union Pacific Company voluntarily went to them and prevented them from building by making the contract to use its bridge. At that time the Union Pacific bridge was the only one available for railroads at that point. The Terminal Company's bridge was not in existence. The Rock Island and Milwaukee companies had been prevented by the action of the Union Pacific from building their own bridge, and then were shut out by it from using the only available bridge which it had contracted to allow them to use. Certainly from an equitable standpoint this case is not parallel with the case at bar.

The case of *Chicago, etc., Ry. Co. vs. Kansas C., St. J. & C. B. Ry. Co.*, 38 Fed., 58, cited by appellee below, is not in point. In that case Judge BREWER refused to grant an injunction, and the question of specific performance was not discussed. However, in any event, the case is clearly distinguishable from the case at bar. The defendant company had agreed with the City of St. Joseph that in consideration of being permitted to lay down its tracks on certain streets in said city, it would permit other roads to use said tracks. This is very similar in principle to the Joy case. Of course the object of the city was to set apart certain of the streets for railroad use, and not permit the other streets to be

so used, in the same way as the Park Commissioners in the Joy case desired only one right of way through the park, to be used by all roads. The same line of reasoning which makes the Joy case distinguishable from the case at bar will also make this case distinguishable. There were no other streets which could be used, and the new railroad company had to use the streets occupied by the defendant company, or none. In the case at bar there is a choice of bridges. If refused the use of one, still the other remains open.

The cases of *Canada Northern Ry. Co. vs. International Bridge Co.*, 7 Fed., 653, and *Canada Southern Ry. Co. vs. the same* defendant, 8 Fed., 190, cited by appellee in the court below, have not the slightest bearing on the point under discussion. The sole question in those cases was as to whether Congress intended to give the United States Court for the Northern District of New York power to fix the compensation to be paid by companies desiring to use the Niagara Bridge, and the Court held that such was not the intention. The question of specific performance of a contract or duty was not discussed or even hinted at. Moreover, the bridge in question was the only one which could be used by railway companies at the point where it was erected.

Appellant is here earnestly resisting the invasion of its property rights. It pleads for the right of contract and the freedom of contract. These important rights, guaranteed to it as to all persons under our institutions, should not be taken from it unless the reasons are strong, the necessities great and the authority clear.

## SIXTH POINT.

**The Mason City & Fort Dodge Railroad Company had no corporate power under its charter to acquire any right, title or interest in the property of the appellant in the State of Nebraska.**

Appellee is a corporation organized under the laws of the State of Iowa. Its articles of incorporation and amendments thereto are found upon pages 149–166 of the Record, Evidence, Vol. I. By Article II., of the original articles of incorporation, it was stated that (Record, p. 151):

ARTICLE II.

"The object of said corporation is to construct, maintain, and operate a railroad between the cities of Mason City, in the County of Cerro Gordo and Fort Dodge, in the County of Webster, in the State of Iowa, with such lateral branches and such extensions beyond each and every of said points as the board of directors of said corporation may determine upon and designate, and the law permit."

Thereafter the articles were amended, and Article II. was amended so as to read as follows (Record, p. 164):

ARTICE II. (As amended.)

"The object of said corporation is to construct, maintain, and operate a railroad extending from Mason City, in the County of Cerro Gordo, in the State of Iowa, to Fort Dodge, in the County of Webster, in said State, thence to Lehigh in said County of Webster, and thence from a point on its line at or near Lehigh in a southwesterly direction

to the City of Council Bluffs, in the County of Pottawattamie, in said State of Iowa; with such lateral branches from any point on its said line, and such extensions beyond each and every of said points, as the board of directors of said corporation may determine upon and designate and the law permit."

It will be seen that there was an express limitation in the articles of incorporation to the construction of a railroad between Mason City, Fort Dodge, Lehigh, and Council Bluffs, all in Iowa. Power was given to build lateral branches or extend the line beyond these points *as the Board of Directors might determine upon and designate.*

No other action was taken by the Board of Directors, and no action has been taken by the corporation authorizing lateral branches or extending the line beyond the points designated in the Articles.

We think it would be a work of supererogation to cite authorities in support of the fundamental propositions that corporations have no other powers than such as are specifically granted or such as are necessary to carry into effect the powers expressly granted; that corporations can make no contracts or do no acts, either within or without the State which has created them, except such as have been expressly authorized, and only in the manner in which they have been authorized; and that they can only make such contracts as the Legislature may authorize them to make. Under the comity of a State, permission cannot be given to a railroad company to go beyond its charter.

It is true that appellee has filed its Articles in the State of Nebraska, and conformed to the laws thereof. This proceeding, however, does not give to it any other or greater powers than are found in its charter. The State to which appellee owes its existence and within whose dominion it belongs, has legally empowered it only to build the lines specified in its charter. The State of Nebraska cannot concede permission to appellee to go beyond its charter rights, privileges and powers.

> "A railroad cannot contract to extend its lines beyond the limits defined in its charter, nor construct branch roads not authorized by its charter, nor make any material change in its route where the charter prescribes what the route shall be."
>
> *II. Elliott on Railroads*, Sec. 374, p. 512, and cases cited.

It is claimed by appellee that by Section 2038 of the Code of Iowa of 1897, power was conferred upon it to construct or extend its line into the State of Nebraska. Under this section there is no doubt that if appellee had taken the proper corporate action enlarging the scope of its powers or declaring that it would or intended to extend its line from the State of Iowa into another State, it would be permitted to do so under the provisions of this section. But the articles of incorporation of appellee show that for some reason best known to itself, it has limited, defined and confined the line of railway that it is to construct, and it has expressly stated in Article II., quoted above, that there can be no extension beyond the points therein designated without the

action of the Board of Directors, who are to determine and designate the extension. No such action has been taken.

The Court of Appeals held that the resolution of Aug. 28, 1902, authorizing and directing the officers of the Company to negotiate for, to demand and to enforce by this or other suits its demand for the use of the bridge, etc., was a complete compliance with the requirements of the charter. We cannot agree with this finding. Article II. provides that the Company may extend as the Board of Directors of said corporation *may determine upon and designate* and the law permit.

How can it be held that a mere notice to the Union Pacific, as is this resolution referred to in the opinion and found in the Record Evidence at page 577 and following, is a solemn corporate declaration that the company intends to extend its line into Nebraska and to South Omaha. Not even in the notice do they recite that such an extension has been determined upon, but the notice simply demands to be admitted into full, equal and joint possession, etc.

Suppose the demand had covered the entire line of the Union Pacific? Would this Court hold that the company had, by formal corporate resolution, determined to extend its line to San Francisco? Who would think of looking into a demand on the Union Pacific Railway to determine the extent of the corporate powers of the Mason City Company? But this is what must be done if the holding of the Court below is sustained.

## SEVENTH POINT.

**The Mason City & Fort Dodge Railroad Company was not entitled to avail itself of the conditions found in the Alvin Saunders deed.**

The property described in the Alvin Saunders Deed, which is set out in the bill of complaint, beginning on page 20 thereof, is a portion of the property involved in this controversy. Upon parts of the property thus conveyed are now located and situated certain of the tracks, side tracks and depots referred to in the bill of complaint, which appellee seeks to use. All of the property conveyed by the Saunder's Deed was sold with the other property at the foreclosure proceedings and appellant became the owner thereof, as the purchaser at said sale.

This deed purports to have been executed on January 20, 1872, as an indenture, with Alvin Saunders, trustee of the City of Omaha, as party of the first part, and Union Pacific Railroad Company as party of the second part, with a lengthy preamble reciting the title of Saunders, trustee, and a direction by the City Council of the City of Omaha to him to make, as such trustee, a conveyance to the railroad company of the property in said instrument described, subject to the terms, conditions and restriction of said contract, quoting the same and recites the consideration to be "of the premises and of the sum of one Dollar," and "grants, sells and conveys unto the said party of the second part, and to its successors," the real estate described.

There is no formal *habendum* clause. That is to say, the words "to have and to hold to said party of the second part its successors and assigns," etc., are absent.

In Washburn on Real Property (Sixth Ed.), Secs. 2357, 2358, it is said (pp. 420, 421):

> "It is [the *habendum*] not an essential part of a deed. * * * If the granting part of a deed contain proper words of limitation, the *habendum* may be dispensed with altogether; and of so little importance is it deemed, compared with the words of the grant, that, if the *habendum* is clearly repugnant to the grant, it is treated as of no validity or effect."
>
> "An *habendum* may, therefore, be regarded as the clause following the granting part of the premises in a deed which defines the extent of ownership in the thing granted, to be held and enjoyed by the grantee, and can, therefore, be applied to use only when the granting words leave the subject of such ownership open to explanation." * * *

The granting part of this conveyance is in form absolute. There is nothing in the granting part of the instrument in any way limiting the grant. It appears that the only authority of this trustee to make this deed is a resolution of the City Council of the City of Omaha, which is referred to in the preamble of the instrument, and which directs him to make, execute and cause to be delivered a deed, subject to the terms, conditions and restrictions of said contract.

The words of explanation put in the place of the *habendum* clause are the words which, at the time, were probably meant to bring the conveyance as made within the terms of the resolution under which the trustee acted, which words classify themselves into three propositions, as follows (Record, p. 29):

1. "Hereby limiting the use of all said premises to the legitimate purposes of [*a*] depot and transfer grounds; [*b*] and grounds for right of way and approaches to the said Missouri River Bridge."

2. "Subject to the conditions and restrictions contained in the contract above recited."

3. The imposition of a condition as follows: "Provided, further, that in case said premises, or any part thereof, be abandoned or disused or converted to any other than the uses and purposes hereinbefore limited, then the same shall revert to and become the property of the said City of Omaha."

It will be noticed that, strictly speaking, the so-called *habendum* clause makes a limitation of the uses to which the property may be applied. This clause seeks to impress the premises conveyed with a certain particular use, and to limit the nature and kind of business which the grantee company might permit thereon, but the property was conveyed subject to the conditions and restrictions contained in the contract recited in the deed, with a proviso, that in case of abandonment or disuse, or if converted to any other use, the same should revert to and become the property of the City of Omaha. Whether this be a limitation or a condition subsequent, it is certain that the estate passed in fee simple to the Union Pacific Railroad Company, and is a base or determinable fee.

*In form and in substance, the deed creates a limitation, because the grantor conveys the property to the grantee subject to the conditional limitation inserted in the deed with a grant over to the City of Omaha. This*

*is subject to the following proviso: If Alvin Saunders, trustee, shall be considered in law and in equity as the City of Omaha, or if in law and equity the City of Omaha is treated as the real grantor*, notwithstanding the office filled in the instrument by Alvin Saunders, the dry and naked trustee, then the instrument can only be construed to be a deed upon condition subsequent. The title passes, and there is no real limitation over, because the reservation of the right to re-enter and the reverter clause are in favor of the grantor.

COVENANT.

That the railroad company would use the property for the purposes specified in the contract does not amount to a covenant. There are no words of promise by the grantee. The words of grant import, not a covenant to use, but either a conditional limitation or a condition subsequent, so that upon failure to use the grounds and to comply with the contract, the estate might be avoided and the City of Omaha again become the owner of the property. If the real grantor in said instrument is the City of Omaha, there is then in the instrument *no limitation over to a person other than the grantor*, and the estate is liable to be defeated only by re-entry by the City of Omaha, and this right of re-entry cannot be assigned or conveyed by the City of Omaha. This right of re-entry is not an estate in the land. The words used in the reverter clause are appropriate, although unnecessary, for the grantor to reserve to himself the right of re-entry.

It is provided in the Alvin Saunders Deed, after

setting out the conditions under which the property covered thereby is granted to the railroad company:

> "In case said premises or any part thereof be abandoned or disused or converted to any other than the uses and purposes hereinbefore limited, then the same shall revert to and become the property of the said City of Omaha."

These words are those of condition rather than of limitation. Words of limitation in a deed determine the estate upon the happening of the event itself without the necessity of anything being done to regain the estate, while words of condition such as are found in the Saunders deed do not have any effect upon the title to the property itself, unless the party interested in the condition moved in the matter and thereby became reinvested with the estate which has been granted away.

So long as the City of Omaha is satisfied with the use of the property made by the railroad company, no one else has any right to complain, and although the conditions may have been broken by it, its right to occupy the property and its title thereto might run on indefinitely.

The principle of law as above set forth is laid down in an unbroken line of decisions from the earliest text writers, through a long list of adjudicated cases, and an examination of the cases referred to below will establish this principle beyond controversion.

Delvin on Deeds, Sec. 974, is as follows:

> "A limitation determines an estate upon the happening of the event itself, without the necessity

of doing any act to regain the estate. 'The distinction between an estate upon condition and a limitation by which an estate is determined upon the happening of some event, is, that in the latter case the estate reverts to the grantor, or passes to the person to whom it is granted by limitation over, upon the mere happening of the event upon which it is limited, without any entry or other act; while in the former, the reservation can only be made to the grantor or his heirs, and an entry upon breach of the condition is requisite to revest the estate. The provision for re-entry is, therefore, the distinctive characteristic of an estate upon condition; and when it is found that by any form or expression the grantor has reserved the right, upon the happening of any event, to re-enter, and thereby revest in himself his former estate, it may be construed as such, where a condition subsequent is followed by a limitation over in case of the breach of a condition, it becomes a conditional limitation. No one but a grantor or his heirs can take advantage of a breach of a condition. But a stranger may take advantage of a limitation."

See, also, *Attorney General vs. Merrimack Mfg. Co.*, 14 Gray, 586.

In the case of Osgood vs. Abbott, 58 Maine, 73, it was held that a deed to the proprietors of the South Chapel in Frilburg was made "in consideration of having a meeting house erected and continued on the lot of land heretofore described," stipulated that "this lot being given for a meeting house lot, is to revert to me, unless it should be improved for that purpose" with *habendum* clause "to said proprietors and their succes-

sors forever, provided it be improved for that purpose." The grantee was not an incorporated society. The Court held that the grantor and his heirs were estopped to deny the existence of the grantee; that the deed conveyed an estate upon condition subsequent; that the estate continued in the grantee until defeated by actual entry made for the purpose of defeating it by some one having the right to claim for such forfeiture. HERE WAS NO CONDITIONAL LIMITATION OF THE ESTATE GRANTED. The language of the conveyance is not such as to carry an estate only *durante dum donec quosque tamdiu*, which would terminate by breach of the condition *ipso facto*. This apparently was an estate in freehold, defeasible by a breach of the condition, if the parties entitled to require the performance of the condition chose to enforce it.

That the entry might be made after breach of the condition by the grantor or his heirs, and it was unnecessary to stipulate for a right of re-entry for such breach of condition.

In the case of Stearns vs. Godfrey, 16 Maine, 158, it was held:

> "If a condition subsequent be followed by a limitation over, in case the condition is not complied with, or there is a breach of it, it is termed a conditional limitation, and takes effect without any entry or claim, and no act is necessary to vest the estate in the party to whom it is limited. Where the Commonwealth of Massachusetts granted a tract of land to B. and F. by name, and

to certain settlers named only in the *habendum*, each settler to have a 100-acre lot, including his improvement on which he lived, of land, etc., 'on condition that each of the grantees aforesaid, pay to said B. & F. five pounds in lawful money within one year from this time, with interest till paid,' followed by these words: 'Provided, nevertheless, if any settler or other grantee aforesaid shall neglect to pay his proportion of the sum or sums aforesaid to be by him paid in order to entitle him to 100 acres as aforesaid, in that case the said B. & F. shall be entitled to hold the same in fee, which such negligent person might have held by complying with the condition aforesaid on his part.' The title of any settler who failed to perform the condition within the year, vested in fee in B. & F. and was out of the reach of legislature control" (Syllabus).

In the case of Voris vs. Renshaw, 49 Ill., 425, it was held that a conveyance by George Morton to his son, in consideration of one dollar, and natural love and affection, but with the following *habendum:* "to have and to hold the premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns forever, upon the express condition, however, that the party of the second part shall not convey the above described property, except by lease for a term of years, to any person whomsoever, prior to the first day of January, 1861," held, that where the grantee, within the limited period, executed to a party a lease of the premises for ninety-nine years, and also at the same time gave him a bond for a conveyance of the property

in fee after the expiration of the limitation, and received from the purchaser the purchase price thereof, these acts did not work a forfeiture of the estate.

In the case of Henderson vs. Hunter, 59 Pa., 335, it was held:

> "A lot was granted to trustees naming them, and to their successors in trust, for the uses, etc., thereinafter mentioned, to 'hold to said trustees and their successors in office forever in trust,' to build a house of worship for the members of the Methodist Church, 'so long as they use it and no longer, and then to return back to the original owner' according to the rules and discipline from time to time adopted by the general conference held, that the estate in the trustees terminated when the house ceased to be used as a place of worship according to the discipline of the church" (Syllabus).

In People of Vt. vs. Society, etc., 2 Paine [U.S.C.C.], it was held that no person can take advantage of a condition broken, except the grantor and those claiming by descent. The grantor, although a state government, may be estopped, as others, but no grantee, or assignee of the reversion can take advantage of a re-entry by force of condition broken.

In the case of *Southard vs. Central R. R.*, 26 N. J. L., 13, 17, it was said:

> "The condition of the grant, upon the breach of which a forfeiture is claimed to have occurred, is as follows: 'If at any time forever hereafter, the said company shall cease to use and occupy the above described lands and premises for the sole and only purpose of a depot or other place for the reception

and discharge of passengers, produce, goods, wares and merchandise or shall establish, make, have, use, enjoy or possess any other depot or other place for the above described purposes, within one mile of the said lots and premises hereby granted and conveyed, or shall at any time forever hereafter build or erect, or cause or permit to be builded or erected by any other person or persons, upon said premises, any public house, inn or tavern, store, or other house or houses, other than for storing of produce, grain, goods, wares and merchandise, or any other house of any kind or use soever, other than may be necessary to and for the said company or parties of the second part, for their own and sole use and accommodation as aforesaid, that then and in that case the right and title hereby conveyed shall cease, and the said parties of the second part shall forfeit all the right, title and interest conveyed.' * * *

"It is not insisted, nor can it be, that the condition is violated by a transfer of the rights and property of the grantees under legislative sanction to another corporation. But it is insisted that the condition is violated first by extending the railroad to a point beyond Somerville, whereas the design of and effect the condition is to make that point the terminus of the road. There is no such limitation expressed in the grant. * * * If such was the intention of the parties, it was the most important provision in the whole condition of the grant, and it is remarkable that no direct allusion should be made to it. It is reasonable to expect that so important a restriction would have been expressed in clear and unequivocal terms, and not left to conjecture and inference. It is said that by extending the road, the company used the land conveyed for

the purposes of transit, whereas by the terms of the grant they are restricted to use it for the sole and only purpose of a depot."

There is no discussion in this case as to liability under the condition as thus construed, but the above language is important in considering the main purpose of the contract as quoted in appellee's bill.

In Fifty Associates vs. Howland, 52 Mass., 99, it was held:

> "A lease for five years contained this clause: 'Provided, always, and these presents are upon this condition, that if the lessees, or his representatives, shall neglect or fail to perform and observe any or either covenant, * * * then the lessor lawfully may immediately, or at any time thereafter, and whilst such neglect or default continues, and without further demand or notice, enter into and upon the said premises, repossess the same as of his former estate, and expel the lessee.' The lessee failed to pay rent according to his covenant and the lessor entered for condition broken; held, that this clause in the lease was a condition, and not a conditional limitation; that the lessee's estate was not determined by his failure to pay rent, but by the lessor's entry, if that entry was legally made" (Syllabus).

In the case of *Wheeler vs. Walker*, 2 Conn., 196, it was held that although the rules applicable to the construction of a devise may be entirely different from those pertaining to the construction of conveyances in the particular case under consideration, they seem to be the same. A devisor gave to his sons D. and M. all

the rest and residue of his estate, real and personal, they paying to his two daughters P. and A. each three thousand dollars within one year after his decease. The money was not paid to one of the daughters at any time. She entered upon the estate for non-payment and brought ejectment for possession of her one-fourth. It was held that the devise was conditional devise.

*Blackstone* states the same in the following words (Blackstone, 2 Ch., 10, p. 165):

> "A distinction is, however, made between a condition in deed and a limitation, which Littleton denominates also a condition in law. For when an estate is so expressly confined and limited by the words of its creation that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail, this is denominated a limitation; as when land is granted to a man so long as he is parson of Dale, or while he continues unmarried, or until out of the rents and profits he shall have made 500 pounds, and the like. In such case the estate determines as soon as the contingency happens (when he ceases to be parson, marries a wife, or has received the 500 pounds), and the next subsequent estate, which depends upon such determination, becomes immediately vested, without any act to be done by him who is next in expectancy. But when an estate is, strictly speaking, upon condition in deed (as if granted expressly upon condition to be voided upon the payment of forty pounds by the grantor, or so that the grantee continues unmarried or provided he goes to York, etc.), the law permits it to endure beyond the time when such contingency happens unless the grantor

or his heirs or assigns take advantage of the breach of the condition and make either an entry or a claim in order to avoid the estate. But, though strict words of condition be used in the creation of the estate, yet if on breach of the condition the estate be limited over to a third person, and does not immediately revert to the grantor or his representatives (as if an estate be granted by A to B, on condition that within two years B intermarry with C and on failure thereof then to D and his heirs), this the law construes to be a limitation and not a condition; because if it were a condition, then upon the breach thereof only A or his representatives could avoid the estate by entry, and so D's remainder might be defeated by their neglecting to enter; but when it is a limitation the estate of B determines and that of D commences, and he may enter on the lands the instant that the failure happens" * * *

"In all these instances, of limitations, or conditions subsequent, it is to be observed that so long as the condition, either express or implied, either in deed or in law, remains unbroken, the grantee may have an estate of freehold, provided the estate upon which such condition is annexed, be in itself of a freehold nature."

In 4 *Kent*, part 6, star page 132, it is said:

"If it be doubtful whether a clause in a deed be a covenant or a condition, the courts will incline against the latter construction, for a covenant is far preferable to the tenant. * * * Whether the words amount to a condition or a limitation, or a

covenant, may be matter of construction, depending upon the contract. The intention of the party to the instrument, when clearly ascertained, is of controlling efficacy, though conditions and limitations are not readily to be raised by inference or argument. The distinctions on this subject are extremely subtle and artificial, and the construction of a deed, as to its operation and effect, will after all depend less upon artificial rules than upon the application of good sense and sound equity to the object and spirit of the contract in the given case."

Note (*b*) to the last above quotation is as follows:

"The words usually employed in creating a condition are, *upon condition*; and this, says Lord Coke, is the most appropriate expression; or the words may be: *so that; provided; if it shall happen, etc.* The apt words of limitation are: *while; so long as; until; during, etc.* The words *provided always*, may, under the circumstances, be taken as a condition or as a limitation, and sometimes as a covenant."

*Warvelle on Real Property*, at page 115, defines Conditional Limitations as follows:

"A condition followed by a limitation over to a third person in case of breach or non-fulfillment is termed a conditional limitation. Thus, if land is granted to A, so long as he shall reside upon it, with remainder over to B, this would create a conditional limitation. That is, if A should abandon the land or select some other place of residence the estate held by him would immediately determine and the subsequent estate immediately vest in B.

A conditional limitation is therefore said to be of a mixed nature, partaking both of a condition and of a limitation; that is, of a condition because it defeats the estate previously limited, and of a limitation because upon the happening of the contingency the estate passes to the person having the next expectant interest.

"It will be seen, therefore, that an estate upon condition, as described in the foregoing paragraphs, differs materially from a conditional limitation. The estate in either case is conditional, but the distinction is that the former, while liable to defeat, yet requires some act to be done by the person who has the right to avail himself of the condition and is not in fact determined until there has been an entry or some other equivalent demonstration; the latter, on the contrary, is determined by operation of law without any act by any person, and ceases to exist upon the happening of the event by which its limitation is measured. In the former the reservation can only be made to the grantor or his heirs, who alone can take advantage of a breach of the condition, while a stranger may have the benefit of a limitation.

"In practice, the question arises most frequently in the construction of grants to churches or religious societies or of lands to be used for some public or *quasi*-public purpose. In such cases the authorities are united in declaring that the precedent estate terminates whenever the land ceases to be used for the purposes indicated in the grant and the subsequent estate at once vests without entry or any other act."

*Warvelle on Real Property*, pp. 115–6.

In the case of Bryan vs. Spires, 3 Brewster (Pa.), 580, it was held that "when an estate with a conditional limitation annexed is created, the grantor wholly parts with his estate, no interest being left in him; and the contingent event, when it happens, is a limitation of the first estate granted, and the estate, instead of going back to the original grantor, goes over *ex instanti* without any act but that of the law, to the party named in the very gift itself of the estate as the one to take it in that event."

In Proprietors vs. Grant, 69 Mass., 142, it was held that:

"A limitation by way of executory devise which may possibly not take effect within the term of a life or lives in being at the death of the testator, and twenty-one years (adding, in case of a child then *en ventre sa mere*, about nine months) afterwards is void as too remote and tending to create a perpetuity.

"A devise subject to a conditional limitation void for remoteness vests an absolute estate in the first taker.

"A house and land were devised to the deacons of a church and their successors forever, 'upon this express condition and limitation, that is to say, that the minister, or eldest minister, of said church shall constantly reside and dwell in said house during such time as he is minister of said church; and in case the same is not improved for this use only, I then declare this bequest to be void and of no force, and order that said house and land then revert to my estate, and I give the same to my nephew J. H.

and to his heirs forever.' Held, that the devise over to J. H. and his heirs was conditional limitation, and not upon condition; that it was void as being too remote; and that the deacons and their successors took an absolute estate in fee" (Syllabus).

The Court in the case just quoted discusses the distinction between condition and conditional limitations, and quotes with approval the statement of the same from Blackstone and Kent hereinbefore given. The Court says at page 147:

"Where an estate in fee is created on condition, the entire interest does not pass out of the grantor by the same instrument or conveyance. All that remains after the gift or grant takes effect continues in the grantor, and goes to his heirs. This is the right of entry, as we have already seen, which, from the nature of the grant, is reserved to the grantor and his heirs only, and which gives them the right to enter as of their old estate, upon the breach of the condition. This possibility of reverter, as it is termed, arises in the grantor or devisor immediately on the creation of the conditional estate. It is otherwise where the estate in fee is limited over to a third person in case of a breach of the condition. Then the entire estate, by the same instrument, passes out of the grantor or devisor. The first estate vests immediately, but the expectant interest does not take effect until the happening of the contingency upon which it was limited to arise. But both owe their existence to the same grant or gift; they are created *uno flatu*, and being an ultimate disposition of the entire fee, as well after as before the breach of

condition, there is nothing left in the grantor or devisor or his heirs. The right or possibility of reverter, which, on the creation of an estate in fee on condition merely, would remain in him, is given over by the limitation which is to take effect on the breach of the condition.

One material difference, therefore, between an estate in fee on condition and on a conditional limitation, is briefly this: that the former leaves in the grantor a vested right, which, by its very nature, is reserved to him, as a present existing interest, transmissible to his heirs; while the latter passes the whole interest of the grantor at once, and creates an estate to arise and vest in a third person, upon a contingency, at a future and uncertain period of time. A grant of a fee on condition only creates an estate of a base or determinable nature in the grantee, leaving the right or possibility of reverter vested in the grantor. Such an interest or right in the grantor, as it does not arise and take effect upon a future uncertain or remote contingency, is not liable to the objection of violating the rule against perpetuities, in the same degree with other conditional and contingent interests in real estate of an executory character. The possibility of reverter being a vested interest in real property, is capable at all times of being released to the person holding the estate on condition, or his grantee, and, if so released, vests an absolute and indefeasible title thereto. The grant or devise of a fee on condition does not therefore fetter and tie up estates, so as to prevent their alienation, and thus contravene the policy of the law which aims to secure the free and unembarassed disposition of real property. It is otherwise with gifts or grants

of estates in fee, with limitations over upon a condition or event of an uncertain or indeterminate nature. The limitation over being executory, and depending upon a condition, or an event which may never happen, passes no vested interest or estate. It is impossible to ascertain in whom the ultimate right to the estate may vest, or whether it will ever vest at all, and therefore no coveyance or mode of alienation can pass an absolute title because it is wholly uncertain in whom the estate will vest on the happening of the event or breach of the condition upon which the ulterior gift is to take effect."

It was also held in this case (p. 151):

> "That the limitation of the estate over to John Hancock and his heirs, after the devise in fee to the deacons and their successors is a conditional limitation, and must take effect, if at all, as an executory devise. The original purpose of executory devises was to carry into effect the will of the testator, and give effect to limitations over, which could not operate as contingent remainders, by the rules of the common law."

In the case of Guild vs. Richards, 82 Mass., 309, a conveyance was made "In consideration of love and good will for and towards the Methodist Church and Society of A." to an individual, "in trust for the use and benefit of said church and society," with certain conditions written in the *habendum*, one of which was that "in no case is the general conference of the Methodist Episcopal Church to have any right in said premises and building, or take any control or direction of the same." It was

held that this deed created an estate upon condition; that the union of this church with the annual conference subordinate to the general conference of the Methodist Church and the conveying of the land to trustees named by such authority according to the usages of the church were a breach of the condition.

At page 317, the Court said:

> "It is of the essence of an estate on condition, that the right to enter for a breach of the condition is reserved to the grantor and his heirs. It cannot be reserved to strangers. If on the breach of the condition the estate is by the original terms of the conveyance granted over to a third person, it creates an estate upon a conditional limitation and not on a condition. * * * An estate on condition is not terminated by a breach. The law permits it to continue until an entry or claim by the grantor or his heirs. All that remains in the grantor if an estate on condition is a right of entry for breach which is sometimes called a possibility of reverter. This right or possibility although it may be released to the person holding the conditional estate, so as to vest the absolute title in him, cannot be conveyed to a stranger or a third person." [The right of entry having been waived by the grantor, is wholly gone.] *Ibd.*

In the case of Miller vs. Levi, 44 N. Y., 489, it was held that:

> "A provision in a lease that the lessor may 'terminate the lease at the end of any year, by giving sixty days' previous notice, in case he

should sell or desire to rebuild,' is not a condition, but a limitation, and the term expires by force of a sale and notice, in sixty days thereafter, without any further act on the part of the lessor. * * *

"A sale conditioned upon delivery of possession to the vendee the legal title not having actually passed from the landlord, does not terminate the relation of landlord and tenant, so that proceedings cannot be had in the name of the original lessor" (Syllabus).

In this case the Court discusses the distinction between conditional limitations and estates upon condition, citing Crabb on Real Property, Sections 2135 and 2136, to the same effect as the quotations from Blackstone and Kent heretofore quoted. The Court says:

> "For, though strict words of condition be used, if on breach of condition the estate be limited over to a third person and does not immediately revert to the grantor, as if an estate be limited to B on condition that within two years he inter-marry with C, and on failure, then to D, and his heirs, this the law construes to be a limitation and not a condition; for if a condition only A or his heirs could avoid the estate by entry, and so D's remainder might be defeated by then neglecting to enter; but when it is a limitation the estate of B determines and that of C commences, and he may enter on the lands immediately, without any act, as entry or claim."

In Webster vs. Cooper, 14 How., 488, it was held that:

"One of the conditions of the devise was that this party, as soon as he should come into possession of the lands, should take the name of the testator. But as he had not yet come into possession, and it was a condition subsequent, of which only the person to whom the lands were devised over could take advantage, a non-compliance with it was no defense in an action brought to recover possession of the land" (Syllabus).

In *Ruch vs. Rock Island*, 97 U. S., 693, it was held that:

"The breach of conditions subsequent, which are not followed by a limitation over to a third person, does not *ipso facto* work a forfeiture of the freehold estate to which they are annexed. It only vests in the grantor or his heirs a right of action which cannot be transferred to a stranger, but which they, without an actual entry or a previous demand, can enforce by a suit for the land" (Syllabus).

In *Schulenberg vs. Harriman*, 21 Wall., 44, 45, it was held that:

"No one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee but the grantor or his heirs or successors, and if they do not see fit to assert their right to enforce a forfeiture on that ground, the title remains unimpaired in the grantee. The rule equally obtains where the grant upon condition proceeds from the Government" (Syllabus).

The same doctrine obtains where a grant upon condition proceeds from the Government. No individual

can assail the title on the ground that conditions have been broken.

*Holden vs. Joy*, 17 Wall., 211.
*Schulenberg vs. Harriman*, 21 Wall., 44.
*Van Wyck vs. Knevals*, 106 U. S., 360.

In Gray vs. Blanchard, 25 Mass., 284, it was held that:

"The demandant, being the owner of a parcel of land with a dwelling-house thereon, adjoining on the north to land with a dwelling-house thereon, belonging to his sister, facing to the south, conveys to the tenant's grantor in fee simple, 'provided, however, this conveyance is upon the condition that no windows shall be placed in the north wall of the house aforesaid, or of any house to be erected on the premises, within thirty years from the date hereof.' After the sister has conveyed her land to a stranger the tenant mortgages by a deed reciting the foregoing provision, and afterward while remaining in possession, makes windows in the north wall. Held, that the above clause was a condition, and not a covenant that it was a valid condition, and that such breach of it worked a forfeiture of the estate and gave the demandant a right to reenter" (Syllabus).

It being established under the rule laid down by the above and foregoing authorities that the Saunders deed is a deed absolute, with a condition subsequent attached, it follows that no one aside from the grantor would have the right to enforce the forfeiture therein contained. The deed is made by Alvin Saunders, Trustee, but an examination thereof shows that he was merely a

naked trustee, and that the real party in interest and the only party who would be entitled to enforce the forfeiture, if our contention is correct, would be the City of Omaha. As supporting this position, it is important to notice the relation of the grantor, Alvin Saunders, Trustee, to the City of Omaha and to the Union Pacific Railroad Company.

On the 31st day of August, 1869, Alvin Saunders executed to the City of Omaha a certain declaration of trust. It appears that Saunders and others constituted a certain board of adjustment for the settlement with the owners of the property "to be embraced within the depot grounds and grounds for right of way connected with the bridge of the railroad company over the Missouri River," and to pay for such grounds with the proceeds of bonds issued by the city for such purpose, and to cause the property to be conveyed to the railroad company. In the management of said business, the board deemed it necessary for Alvin Saunders temporarily to take the title to said property, to be by him held in trust for the City of Omaha, and to dispose of the real estate for the purpose "aforesaid" (depot grounds and grounds for right of way connected with the bridge over the Missouri River), with such restrictions and limitations as might be deemed necessary to protect the interests of the city under the direction of said board.

Saunders took the title as Trustee and executed a declaration of trust, by which he declared that "all the lands and property * * * are held by me in trust for the sole use and behoof of the City of Omaha, to be

disposed of and conveyed by me under the direction of said board at such time as they shall request, for the purpose aforesaid, and I do hereby acknowledge, testify and declare that the consideration money paid, and to be paid, for said property is not my own proper money, but the money of the City of Omaha. And further, that on request of said board and at the charge of the said board or city, I will grant and convey the said property without any consideration therefor, as the said board shall direct for the furtherance of the objects and purposes aforesaid " (Record, Pleadings, p. 242).

The deed itself recites that Saunders was the Trustee of the City of Omaha, and that the City Council of the City of Omaha, had directed him as such Trustee, to make, execute and deliver to the railroad company a deed of said real estate, subject to the conditions and restrictions of a certain contract recited in the deed.

The City of Omaha was the real party in interest in said conveyance. The board of adjustment was a board acting for and on behalf of the city. The records of the council show that the city paid the money for the property, and that it was conveyed to Saunders to hold as Trustee for the city. He was the holder of the mere legal title, as a naked or dry trustee, and was to hold the title at the pleasure of the city, and to convey the same on its request.

In considering the construction to be placed upon the words of the instrument, a due consideration of these facts is necessary. Alvin Saunders is the nominal grantor, but the real maker of this deed was the City of Omaha. At least, in a Court of Equity, the relations

of these parties cannot be overlooked in determining the rights of the parties.

PROVISIONS OF THE NEBRASKA STATUTES.

The statutes of Nebraska, in force at the time of the making of this instrument, contains, amongst other things, the following provision:

> "The term 'heirs' or other technical words of inheritance, shall not be necessary to create or convey an estate in fee simple" (Revised Stat., Sec. 52; Comp. Stat. 1901, p. 944).
>
> "Every conveyance of real estate shall pass all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used." (Revised Stats., Sec. 55; Com. Stats. 1901, p. 945).
>
> "In the construction of every instrument creating, or conveying, or authorizing, or requiring the creation or conveyance, of any real estate, or interest therein, it shall be the duty of the courts of justice to carry into effect the true interest [intent] of the parties, so far as such intent can be collected from the whole instrument, and so far as such intent is consistent with the rules of law." (Revised Stats., Sec. 58, Comp. Stats. 1901, p. 945).

SAUNDERS' ESTATE. SAUNDERS WAS A MERE TRUSTEE. HIS INTEREST WAS THAT OF A BARREN, DRY, NAKED OR SIMPLE TRUST.

In Beach on Trusts, Vol. II., Sec. 554, at p. 1262, it is stated:

"A passive or bare trust may be defined as a trust in which the trustee is simply a depository of the trust estate. He has no active duties to perform while the relation continues, but simply holds the legal title to the trust estate for the beneficiary. On the requisition of the beneficiary it is his duty to convey to him, or to another, by his direction, the title to the trust property, and with the discharge of this obligation the trust terminates. Such trustees are designated as passive or naked trustees.

"A simple trust gives to the *cestui que trusta* right to the possession, control and disposal of the property, and the legal estate becomes executed in him, unless when it is necessary to remain in the trustee to preserve the estate for the *cestui que trust*, or to pass it to others. As a consequence, it is a general principle that a simple or passive trust cannot continue the legal estate in the trustee, except for a proper and useful purpose, such as the law will regard and protect, and as soon as the purpose fails, or ceases to exist, the legal estate becomes executed in the *cestui que trust*. In the former case equity preserves the trust to give effect to the donor's right of dominion over his property, and in the latter in favor of public policy, permits it to fall as useless" (Sec. 555, p. 1264, and notes).

Under the Statutes of Uses and Trusts either in England or in those states of the United States where such statutes are in force, the title of the dry naked trustee is at once executed in the *cestui que trust* (Secs. 561, 562, and notes).

In *Farmers & Merchants Ins. Co. vs. Jensen*, 58 Neb., 522, it was held that:

"The Statutes of Uses is not of the law of this state (Neb.)" (Syllabus).

2 Pomeroy's Equity Jurisprudence, Sec. 988, p. 1448, is as follows:

"Express private trusts are of two kinds, passive or simple and active or special: An express passive or simple, or, as it is sometimes called, pure, trust exists when land is conveyed to or held by A. in trust for B. without any power expressly or impliedly given to A. to take the actual possession and management of the land, or to exercise acts of government over it except by the direction of B. In such a case the naked legal title alone is vested in the trustee, while the equitable estate of the *cestui que trust* is to all intents the beneficial ownership entitling him to the possession, the rents and profits, and the management and control according to the extent of his estate. These passive trusts are considered in equity as virtually equivalent to the corresponding legal ownerships; the trust is regarded rather as fastened upon the estate than upon the person of the trustee; it is never suffered to fail for want of a trustee, either when the designated trustee dies, or refuses to act, or is an improper person. As a general principle the rules of law, excepting those growing out of the doctrine of tenure, have been applied by analogy as far as practicable to these corresponding passive trust estates."

It has been held by a long line of decisions that no one can take advantage of the performance of a condition subsequent annexed to an estate in fee but the grantor, or his heirs or successors, and if they do not see fit to

enforce their right to a forfeiture, the title remains unimpaired in the grantee. This rule equally obtains where the grant upon condition proceeds from the government. No individual can assail the title on the ground that conditions annexed have been broken.

*Schulenberg vs. Harriman*, 21 Wall., 44.
*Holden vs. Joy*, 17 Wall., 211.
*Davis vs. Gray*, 16 Wall., 203.
*Ruch vs. Rock Island*, 97 U. S., 693.
*Van Wyck vs. Knevals*, 106 U. S., 360.
*Warner vs. Bennett*, 31 Conn., 468.
*Phelps vs. Chesson*, 12 Iredells Law. (N. C.), 194.
*Indianapolis R. Co. vs. Hood*, 66 Ind., 581.
*Plumb vs. Tubbs*, 41 N. Y., 442.
*Aiken vs. Albany & R. Co.*, 26 Barb., 298.
*Hammond vs. Railroad Co.*, 15 S. C., 32.
*Close vs. Railroad Co.*, 64 Iowa, 149.
*Railroad Co. vs. Wiltse*, 116 Ill., 449.
*Hickox vs. Railroad Co.*, 78 Mich., 615.
*Scholl vs. Coal Co.*, 118 Ill., 429.
*Gray vs. Blanchard*, 8 Pick., 291.
*Cowell vs. Springs Co.*, 100 U. S., 55.
*Hooper vs. Cummings*, 45 Me., 365.

*Tiedeman on Real Property*, at Sec. 277, says:

"If it is a condition subsequent, the estate is defeated only at the election of the parties who can take advantage of the breach."

*4 Kent* (13th ed.) star pages 126, 127, is as follows:

"The material distinction between a condition and a limitation consists in this, that a condition does not defeat the estate, although it be broken,

until entry by the grantor or his heirs, and when the grantor enters he is in as of his former estate."

Washburn on Real Property, Vol. 2, Ch. 14, Sec. 12, reads as follows:

"A condition, however, defeats the estate to which it is annexed only at the election of him who has a right to enforce it. Notwithstanding its breach, the estate, if a freehold, can only be defeated by an entry made, and until that is done it loses none of its original qualities or incidents."

The City of Omaha does not join in this suit, nor has it in any manner been made a party to this proceeding. It is the only one who would be entitled to institute proceedings to compel the performance of the conditions in the Saunders' deed, or insist upon a forfeiture for failure to perform said conditions. No right of action would lie on the part of any third party, such as the appellee in this case, to enforce such conditions.

We think the case of *Joy vs. St. Louis*, 138 U. S., 1, is absolutely decisive of the question that the City of Omaha is a necessary party complainant to this suit. In that case an agreement was made between the predecessor of the Wabash Railroad Company and the Commissioner of Forest Park, by which any railroad so desiring would be allowed to use certain tracks of the said predecessor of the Wabash Company. Subsequently the control of said Forest Park was taken away from commissioners and vested in the City of St. Louis. The Colorado Railroad Company wished to make use of said tracks under said agreement, but the Wabash Company refused to permit it. Thereupon suit was

brought to enforce specific performance of the agreement against the Wabash Company by the Colorado Railway Company and the City of St. Louis jointly. No attempt was made by the Colorado Railway Company alone to enforce the agreement, and the Supreme Court held that the City of St. Louis, as a successor to the park commissioners, was not a nominal, but a necessary, party to the suit.

In *Joy vs. St. Louis*, 138 U. S., 1., it was said, at page 38:

> "The covenant in paragraph 9 of the tripartite agreement created an easement in the property of the County company and the Kansas City Company for the benefit of the public, which might be availed of, *with the consent of the public authorities, properly expressed*, by other railroad companies, etc." * * *
>
> "The City of St. Louis is, in the present case, *not merely a nominal party*, but is charged with the duty of protecting the park, and of preserving and fostering the commerce of the city" (p. 51).

In the agreement in the Joy case, there was no provision for forfeiture in case of non-compliance with the conditions on its part by the railway company. In the case at bar there is such a provision. The deed states explicitly what will happen on failure to comply with its provisions, that is, the land will revert to the City of Omaha. Under this clause we contend that specific performance cannot be enforced; that by it the parties agreed on the consequences of default, and the Court will leave them to their agreement. But certainly, if the City of St. Louis was a necessary party in

the Joy case, where no penalty was provided in case of default, much more so would the City of Omaha be a necessary party in the present case, where it is expressly stipulated that in case of default the land would revert to the City of Omaha, and the City of Omaha reap the benefit from enforcing the stipulation.

But even if the condition subsequent had not been placed in the Saunders' deed, expressly providing the consequences in case the conditions therein were not complied with, we contend that appellee would have acquired no rights under that deed capable of enforcement by it, and that in no way or manner can it prosecute this action under any claimed rights growing out of the Saunders' deed.

It is manifest from the terms of that deed and the agreement incorporated therein, and all the circumstances surrounding the making of it, that the intention was to benefit the City of Omaha by making it a great railroad center, and that the incidental benefits which might accrue to individual railroads was not considered. It is very clear that what the City of Omaha wanted was to help itself, and as to any incidental benefits to any particular railroad it was absolutely indifferent. Certainly the City of Omaha never entered into this contract and spent this money with a view of helping the railroads. If it had not thought it would have been benefited by the performance of the contract, it would never have entered into it. If it had deemed that the railroads would be benefited by using the bridge, but that the City itself would not, the contract would never have been even thought of.

Is there any doubt but that the City of Omaha, if it could make this contract, could waive the carrying out of its provisions? What right, then, has the appellee, a stranger to the instrument, not in privity of contract with either party, to come to this Court and demand the enforcement of its provisions? Suppose the City of Omaha came in and expressly waived the enforcement of this contract, which was made solely and purely for its benefit, could it then be contended that the appellee would have any standing in this Court, founded on that contract? Such a contention would be absurd. The conclusion is irresistible that the City of Omaha is a necessary party to this suit as far as it is founded on its contract. This point has been expressly ruled in the Joy case, *supra*:

> "The object of protecting the park, and that of preserving and *fostering the commerce* of the city, were set forth in the tripartite agreement, and the City of St. Louis, a plaintiff in the suit as charged with those duties, was not merely a nominal party to this suit" (Syllabus).

Bonds furnished by contractors with the State provided for payment of all claims for labor and material in connection with contract. Held that as there could be no lien against the State, this provision was intended for the benefit of all furnishing labor and material, and therefore parties so furnishing labor and material could sue on said bonds.

*Kaufmann vs. Cooper*, 46 Neb., 644.
*Fitzgerald vs. McClay*, 47 Neb., 816.
And many cases cited.

The holding in the above Nebraska cases is based on reasoning strictly in line with our contention. The Court, construing the provisions of the bond in connection with the law that no liens would lie as to state property, held that it must have been *intended* that the bonds *were for the benefit of the laborers and material men*, hence allowed them to sue thereon.

*Welden Nat. Bank vs. Smith*, 86 Fed., 398, 402, (C. C. A. 2d Circuit, Mar. 2, 1898), it was said:

> "There are many cases in which a promise made upon a valid consideration by one person to another for the *benefit of a third* can be enforced by the third person in his own name, although he was not privy to the consideration. As was said in *Austin vs. Seligman*, 18 Fed., 522, where the general question was discussed, 'The result of the better considered decisions is that a third person may enforce a contract made by another for his benefit whenever it is manifest from the language or terms of the agreement that the parties intended to treat him as the party primarily interested.' In the language of FOLGER, J., in *Simson vs. Brown*, 68 N. Y., 355, 'The contract must be made for his benefit as its object and he must be the party intended to be benefited.' The authorities cited in *Austin vs. Seligman* and in the note to that case by Mr. Wharton are sufficient references in support of the proposition, and we shall not attempt to collate or review them."

We will give below a few quotations from the case of *Austin vs. Seligman*, approved by the Circuit Court of Appeals for the second circuit in the Welden bank case:

In *Austin vs. Seligman*, 18 Fed. Rep., 519, it was held that:

"Although the subject is one of much controversy, the result of the better considered decisions is that a third person may enforce a contract made by others for his benefit, whenever it is manifest, from the nature or terms of the agreement, that the parties intended to treat him as the person *primarily interested*. See *Hendrick vs. Lindsay*, 93 U. S., 143; *Nat. Bank vs. Grand Lodge*, 98 U. S., 123" (Syllabus, p. 519).

"Other cases decide that although by the agreement, one of the parties undertakes in general terms to assume or pay all the debts of the other, if the agreement appears to be *primarily intended for the benefit of the promisee*, he is the only person who can recover upon the promise. *Nat. Bank vs. Grand Lodge*, 98 U. S., 123; *Dow vs. Clark*, 7 Gray, 198; *Merrill vs. Green*, 55 N. Y., 270; *Pardee vs. Treat*, 82 N. Y., 385." * * *

"And the result of the better-considered decisions is that a third person may enforce a contract made by others for his benefit, *whenever it is manifest from the nature or terms of the agreement*, that the parties *intended* to treat him as the person *primarily interested*. The cases of *Hendrick vs. Lindsay*, and *Nat. Bank vs. Grand Lodge*, and the expressions in the opinions do not antagonize upon this proposition but accord with it. The language of FOLGER, J., in *Simson vs. Brown*, 68 N. Y., 355, may be adopted as a correct and accurate statement of the law, as follows: 'It is not every promise made by one to another, from the performance of which a benefit may inure to a third, which gives a right of action to such third person he being neither

privy to the contract nor to the consideration. The contract must be made for his benefit as its object, and he must be the party intended to be benefited' " (p. 522.)

We would respectfully recommend to the Court's consideration the very able and exhaustive note by Francis Wharton to the case of *Austin vs. Seligman*, referred to with approval by the Court of Appeals for the second circuit in the case of *Welden Bank vs. Smith*. We think it shows very forcibly the trouble and confusion arising out of a deviation from the rules of law as above laid down. We cannot refrain, however, from giving a few citations from that note, (p. 526):

"For these and other reasons it has been held in England that only a person to a contract can sue on it, and that the contract for the benefit of a third party cannot be sued on by such third party. At one time, it is true, it was held that on an agreement between A and B, for the benefit of C, a child of B, suit could be brought by C. This ruling, however, is no longer regarded as authoritative, and it is now firmly settled that the only parties who can sue on a contract are the parties between whom the contract is made (p. 524.)

"[In New York] it was at one time generally announced that a beneficiary can sue personally in all cases in which the contract was made with the intention to benefit such beneficiary to whom a duty was specially due by the defendant. But from the extension not unnaturally applied to this ruling, the courts after a while started back. 'I do not understand,' said RAPELLO, J., 'that the case of *Lawrence vs. Fox* has gone so far as to hold that

every promise made by one person to another from the performance of which a third would derive a benefit, gives a right of action to such third party, he being neither privy to the action nor the consideration. To entitle him to an action the contract must have been made his benefit. He must be the party *intended to be benefited.*' * * * And with a still more perceptible retreat to the old rule, DANFORTH, J., in a later case, excludes from the right of suit on a contract all strangers to whose *incidental benefit it would, if performed, inure.* Perhaps as not varying greatly from the rule as thus qualified, may be cited the case in the text, and the recent rulings of the Supreme Court of the United States on which it is based" (p. 525.)

"In case of trusts for particular objects, a bill in equity can be maintained to compel faithful performance. This has been applied to trusts, special as well as general. In such cases the difficulty arising from non-contractual claimants suing on a contractual claim is avoided (*a*) There is no possibility of a conflict between two claimants, *since both join as plaintiffs.* (*b*) The procedure is to enforce a trust, and does not rest on contract."

In Sayward vs. Dexter, Horton & Co., 72 Fed. Rep., 758, 765 [C. C. A. 9th Cir., Feb. 10, 1896], the Court said:

"But it is not every contract for the benefit of a third person that is enforceable by the beneficiary. It must appear that the contract was made and was *intended* for his benefit. The fact that he is *incidentally* named in the contract, or that the contract,

if carried out according to its terms, would *inure to his benefit*, is not sufficient to entitle him to demand its fulfillment. It must appear to have been the *intention* of the parties to secure to him personally the benefit of its provisions. (Citing many cases, including Nat. Bank vs. Grand Lodge, 98 U. S., 123, and Austin vs. Seligman, 18 Fed., 520.) There is nothing in the contract made by Harrington & Smith with Herrick indicative of an *intention* to protect Sayward from suit except for Herrick's own benefit. The parties to that agreement evidently had in view *their own advantage*, and not Sayward's. It was clearly for Herrick's protection *primarily and chiefly* that the stipulation in question was inserted. If it was the intention to protect Sayward also, that purpose was only *incidental and secondary*."

In Nat. Bank v. Grand Lodge, 98 U. S., 123, 124, it was said by the Court, as follows:

"We do not propose to enter at large upon a consideration of the inquiry how far privity of contract between a plaintiff and defendant is necessary for the maintenance of an action of *assumpsit*. The subject has been much debated, and the decisions are not all reconcilable. No doubt the general rule is that such a privity must exist. But there are confessedly many exceptions to it. * * * Another exception is where the plaintiff is the beneficiary *solely* interested in the promise as where one person contracts with another to pay money or deliver some valuable thing to a third. But where a debt already exists from one person to another, a promise by a third person to pay such debt being *primarily for the benefit of the original debtor*, and

to relieve him from liability to pay it (there being no novation), he has a right of action against the promisor for his own indemnity; and if the original creditor can also sue, the promisor would be liable to two separate actions, and therefore the rule is that the original creditor cannot sue."

In *Buffalo Cement Co. vs. McNaughton*, 90 Hun, 74; 35 N. Y. Supp., 453, it was held that a bond given by a contractor, condition that, in case he failed to pay any persons furnishing him with labor or materials, they might sue on the bond as if named therein, is intended solely for the benefit of the owner and persons furnishing materials to the contractor cannot sue thereon.

In *Greenless vs. Shinnick* (Super. Ct. Cinn., O.), 2 Whly. Law Bull., 282, it was held that, where a contractor undertakes the construction of a building for a gross sum, and gives bond with sureties for the fulfillment of the contract, there is no privity of contract between the sureties and sub-contractors, under a contract between the sub-contractors and principal contractor for part of the woodwork of the building.

In Town of Milton vs. Story, 11 Vt., 101, it was held that:

> "If A take of B an absolute conveyance of his farm, in order to enable him to obtain a pension, under a parcel agreement for his support, and then fraudently denies such agreement, whereby B becomes chargeable to the town for his support, this does not entitle the town to an action, either in law or in chancery" (Syllabus).

A stranger cannot sue upon a deed which only contains covenants between the parties, although it may contain an express covenant for his benefit.

*Douglass & Easton vs. Branch Bank*, 19 Ala., 659.

*Hager vs. Phillips*, 14 Ill. (4 Peck.), 260.

*Haskett vs. Flint*, 5 Blackf., 69 (Ind.); 33 Am. Dec., 452.

*Strohecker vs. Grant*, 16 Serg. & R., 237 (Pa.).

In *State vs. Ry. Co.*, 125 Mo., 596, it was held that:

> " Railroad companies [in providing for the joint operation of their lines] entered into an agreement whereby one agreed to save the other harmless from all its obligations, and in the same clause agreed ' to pay and surrender the same, cancelled,' as fast as they were obtained. Held, that this was only an agreement by one to ' save harmless ' the other, and hence the State as a creditor of the latter could not use thereon " (Syllabus).

In *Feist vs. Schiffer*, 79 Hun, 275; 29 N. Y. Supp., 423, it was held that an agreement between defendants and one D, recited that D undertook to settle claims of defendants against one S; that in order to effect the settlement, it was necessary to purchase a judgment against S, in favor of plaintiff's assignor, for which D gave his check; that afterwards, with the approval of defendants he stopped payment of the check; and that should any judgment be recovered against D on such check, defendants would pay the same. Held, merely a contract to indemnify D, and not a promise for the benefit of plaintiff's assignor.

In *Sav. Bank vs. Thornton*, 112 Cal., 255; 44 Pac., 466, it was held that where the mortgagee in a mortgage taken to secure the repayment of money loaned to the morgagor assumes and agrees to pay an unpaid balance due on a prior note and mortgage given by the same mortgagor to a third party, such agreement is for the benefit of the mortgagor only; and no right of action founded on the contract arises in favor of such third party incidentally to be benefited thereby.

In *Burton vs. Larkin*, 36 Kan., 246; 13 Pac., 398, it was held that a third party who is only indirectly or incidentally benefited by a contract cannot sue on it.

In *Simson vs. Brown*, 68 N. Y., 355, it was held that a third person cannot maintain an action on an agreement to which agreement and its consideration he was not a privy, unless it is made for his benefit, and he was the party intended to be benefited, and it is not sufficient that a benefit will inure to him from the performance of the agreement.

In *Williamson vs. McGrath*, 180 Mass., 55; 61 N. E., 636 (1902), it was held that an application for a loan on real estate reciting that the applicant agrees "to pay to the counsel his charges for the examination of the title, etc.," does not constitute a contract as between the counsel and the applicant, so as to entitle counsel to sue thereon for his services.

In *Opper vs. Hirsch*, 68 N. Y. Supp., 879; 33 Misc. Rep., 360, it was held that where defendant agreed with C.'s son to release a judgment against C. in consideration of services rendered defendant by C.'s son, C. cannot maintain an action to enforce the agreement, since there

was not a sufficient duty owing from the son to C. to support the action.

In *New York S. & T. Co. vs. Ry. Co.*, 97 Fed., 226 (1900), it was held that:

> "Certain railroad companies united, forming a consolidated company, the agreement providing that such company should issue its bonds secured by mortgage on its entire property, for the purpose of taking up bonds of the constituent companies, which bore a higher rate of interest, but the consolidated company did not assume the payment of their indebtedness. Such bonds were made and deposited with a trustee; the officers being authorized to effect an exchange, and if not effected, to make such arrangement as they deemed for the best interests of the company. Held, that such action was not for the benefit of the holders of the outstanding bonds, and gave individual holders of bonds of one of the constituent companies no right to compel the delivery to them severally of bonds of the consolidated company in exchange for their holdings" (Syllabus).

In *Mott vs. New York S. & T. Co.*, 60 N. Y. Supp., 357; affirmed 65 N. Y. S., 190 (1900), it was held:

> "Where an agreement for consolidation of certain railroads authorized the directors of the consolidated company to exchange its bonds for bonds of the consolidated companies on tender by the bondholders, and to take such steps as might be necessary to protect the company against bondholders who did not accept such exchange, such bondholders are not parties in interest or *cestui que trustent*

under such agreement, and hence are not entitled to sue to compel such exchange" (Syllabus).

In *Baxter vs. Camp*, 71 Conn., 245, it was held that a contract made by one with his wife, who had loaned him money, to pay it after her death to her son, if living, if not, to her next heirs to the property, without interest till after her death, can be sued on only by her personal representative; it not being executed for the direct, sole and exclusive benefit of the son, or as in the nature of a family settlement.

In the case of *Austell vs. Humphries*, 99 Ga., 408 (27 S. E., 736), it was held that a creditor has no right of action against one to whom his debtor transfers notes to a third person under an agreement between them that the transferee shall pay the debt, there being no privity of contract between the creditor and such transferee.

In *German Bank vs. Water and Light Co.*, 74 N. W., 685 (Iowa), it was held:

> "A corporation whose debts a stockholder therein promises the purchaser of his stock that he will pay cannot enforce such promise" (Syllabus).

In *Lennon vs. Lyon*, 50 N. Y. Supp., 763; 22 Misc. Rep., 505, it was held that:

> "One member of a firm agreed with a committee of his partner's estate to pay all partnership debts, and indemnify the committee against loss from claims of firm creditors. Held, that, in the absence of proof that the contract was made for the benefit of a firm creditor, he could not maintain an action upon the agreement, to recover the amount of a firm debt" (Syllabus).

In *Steele vs. McBurney*, 65 N. W., 332 (Iowa), it was held that:

> "A provision in a building contract that the owner shall hold a certain percentage of the contract price until the completion of the work is for the benefit of the owner, and does not afford a ground of personal liability by the owner to a subcontractor" (Syllabus).

## EIGHTH POINT.

**The limitations and reservations in the Alvin Saunders deed to the Union Pacific Railroad Company, the original Congressional corporation, were invalid as to this appellant and not binding upon it.**

The Saunders deed, as set forth on page 20 of the Bill of Complaint, recites that certain premises had been conveyed to Saunders as Trustee, and that he had executed in respect thereof a certain declaration of trust, a copy of which is referred to. It further recites that the City of Omaha, by resolution passed on the 2d day of January, 1872, directed him to make, execute and cause to be delivered to said railroad company a deed of the said real estate and premises, subject to the terms, conditions and restrictions of a certain contract, a copy of which is set out.

By said deed Saunders recites that he "does hereby grant, sell and convey unto the said party of the second part, and its successors, the following described real estate (describing same) hereby limiting the use of all said premises to the legitimate purposes of depot and transfer grounds and grounds for rights and approaches to said Missouri River Bridge, subject to the conditions and restrictions contained in the contract above recited; and provides further, that in case said premises, or any part thereof, be abandoned or disused, or converted to any other than the uses and purposes hereinbefore limited, then the same shall revert to and become the property of the City of Omaha."

Under said deed, the title originally conveyed by

said Saunders, Trustee, as grantor to "The Union Pacific Railroad Company," was not absolute in fee. The grant was hampered by a limitation, so that the title of the Union Pacific Railroad Company depended upon its keeping within, and its watchful observance of the words of limitation. Under a true legal construction the Union Pacific Railroad Company must use said grounds as depot and transfer grounds for right of way and approaches to the Missouri River Bridge. This is a limitation, and it amounts to an element in the title itself. If the company should not use the grounds for the specific purpose declared in the limitation, the title is questioned, and the company might at once be called upon to submit its entire rights to the Courts. The granting clause is hampered by that which follows the description, one part of which is a limitation, the other part, being that which follows the proviso, is a condition subsequent. The limitation to the company is for "the use of all said premises to the legitimate purpose of depot and transfer grounds, and grounds for right of way and approaches to said Missouri River Bridge, subject to the conditions and restrictions contained in the contract above recited."

This part of the instrument is a limitation. The other, "that in case said premises or any part thereof be abandoned or disused, or converted to any other than the uses and purposes hereinbefore limited, then the same shall revert to and become the property of the City of Omaha," is a condition subsequent and cannot be taken advantage of by any person whomsoever. The limitation however, is invalid, and it is only the limita-

tion clause of this instrument which is challenged by this bill.

If a deed or grant contains a limitation which is in itself illegal, contrary to public policy or legislation of the state, the grant is good and the limitation is void.

*Conditions, the performance of which is illegal, are void.* If an estate is granted, the continuance of which depends upon the grantee doing something which is illegal or immoral, or omitting something which is his duty, the condition is void, and the estate which is vested becomes absolute.

*Walker's American Law*, 9th Ed., p. 350.

The Saunders deed recites that it was made in consideration of the premises and the sum of one dollar, etc., that Saunders, Trustee,

> "does hereby grant, sell and convey unto the said party of the second part, and to its successors, the following described real estate, to-wit:"

It is apparent that the "premises" mentioned in the consideration was and is the contract recited in the deed and on pages 21 to 25 of the Bill of Complaint, which embraced a scheme defined by the terms of the contract itself, to establish the *operating and actual terminus of* the Union Pacific Railroad at Omaha, in Nebraska, instead of at

> "A point on the western boundary of the State of Iowa, to be fixed by the President of the United States, by executive order dated November 17, 1864, and March 7, 1864."

whereby the eastern terminus of the Union Pacific

Railroad was definitely fixed on the Iowa bank of the Missouri River, in accordance with the Act of 1862.

The second provision of this contract reads:

> "That the eastern terminus of the Union Pacific Railroad shall be and remain at said City of Omaha."

This is the principal point in the contract. All of the remaining and important provisions of the contract closed around this and to a great extent depended thereon. This condition and term of the contract was illegal when the same was made, and could not be performed without a violation of law. The law fixed the terminus of the Union Pacific Railroad Co. (See Sec. 14, Act July 1, 1862; *Railroad Co. vs. Hall*, 91 U. S., 343–9). The contract, in so far as it embraced that element, is illegal. The deed or grant following the contract with such a condition of limitations, is good and the condition or limitation is void.

Looking to the contract as quoted in the deed, the first engagement, to construct the bridge; the fourth, to expend the sum of $100,000 within a given time for passenger and freight depots, and the fifth, to erect certain offices, shops and manufactories, were legal, and all were performed. The second, third and sixth, if read and construed together as one engagement, having for its purpose the establishment and maintenance of the terminus of the road at Omaha, are illegal. If the second, third and sixth clauses are separated, it is clear that the second, which directly provides for the establishment of the eastern terminus at Omaha, is illegal.

It is also clear that the third clause of the contract is for the same reason illegal, in that it prescribes certain details which are necessary to carry out the second clause, and it further seems that in considering the agreement, the terms of clauses two and three must be read together as one. For the same reasons it is impossible to construe the sixth clause without reading in connection therewith the second and third. The third and sixth are really identical with this exception :

The third clause provides that—

> " All passengers and freights coming from the east on all lines of road *seeking a connection with said Union Pacific Railroad at its eastern terminus*, shall be delivered and transferred to the Union Pacific Railroad Company upon said depot grounds, *where the Union Pacific trains shall be made up for the west*, and that said party of the first part will after such bridge completion, transfer upon said grounds to the various railroads that do or may *begin* or end in Council Bluffs or Omaha, all its passengers, baggage, express matter, mails and freight north, east or south bound."

This clause would, therefore, cover all roads coming into Omaha or Council Bluffs from the east or west and terminating therein. But the idea evidently occurred to the grantor that a road might come in from the west and not terminate either at Council Bluffs or Omaha, but pass directly through these two cities, making them in effect nothing but way stations. This would not carry out the idea evidently in the minds of the grantors as to making a great railroad terminus at Omaha.

It was, therefore, necessary to make some modification covering railroads which not only *began* or *ended* in Omaha or Council Bluffs, but also railroads which *pass through* Omaha or Council Bluffs. They therefore had the sixth clause incorporated in the agreement, which covered this contingency, and in order to make it a terminus in fact as well as in name, they further provided that if such railroads did pass through Omaha or Council Bluffs, the Union Pacific Railroad Company should have the option of substituting its own engines in place of the engines of such other roads in crossing said bridge, receiving reasonable compensation therefor. This would compel any railroad company which passed through Omaha and Council Bluffs to turn over its train to the Union Pacific Railroad Company in Council Bluffs, to be hauled to the Omaha station, and there redelivered to the said road, or to turn over its trains at the Omaha Station to the Union Pacific, to be hauled to Council Bluffs, and there in the same way redelivered to the road, making it absolutely necessary for every railroad company passing through to really have a terminal in Omaha. So that we must of necessity read the sixth clause, in connection with clauses two and three, and being in compliance with the general illegal scheme to make the terminus of the Union Pacific at Omaha, and being inseparably bound up with the second and third clauses, it would be equally illegal with said clauses, and the grant would be good regardless of the conditions found in the second, third and sixth clauses.

If a condition subsequent be possible at the time of

making it, and becomes afterwards impossible to be complied with by the act of God or by law, or the grantor, the estate once vested is not thereby divested, but becomes absolute.

*1 Warvelle on Vendors*, Sec. 12, page 451.
*Davis vs. Gray*, 16 Wall., 203.
*Elliott on Railroads*, Sec. 491, page 1309.
*Stuyvesant vs. Mayor*, 11 Paige (Ch. N. Y.), 414.

The rule applicable to all deeds, that the language of the condition is to be taken and construed more strongly against the grantor than against the grantee may be well invoked and applied in the case of conditions subsequent.

*Anderson's Law Dictionary*, p. 1085.

The intention of the parties is to be gathered from the whole deed and conditions and the Court should place itself, as near as possible, in the situation of the parties, to see what they really meant.

*Good Title vs. Bailey*, 2 Cowp., p. 597.
*Gibson vs. Minet*, 2 Browns, House of Lords Repts., p. 48.
*2 Elliott on Railroads*, Sec. 419, p. 561.
*Louisville & Nash. R. Co. vs. Koelle*, 104 Ill., 455.

## NINTH POINT.

We believe this case should be reversed. We are confident that the broad and sweeping decree and order which has been entered herein must be set aside by this Court. The law does not authorize it, nor do the statutes relied upon by appellee direct it.

There is no public exigency or necessity here. There is not a word of evidence in the record showing that the public is interested in this controversy, or that its rights will be affected one way or the other by the final determination herein. There is no appeal for more facilities by the public. Ample and sufficient service is afforded. Numerous lines in and out of Omaha, fully equipped, take care of the transportation interests of the public in the Cities of Omaha and Council Bluffs.

The expressions in the Rock Island case were made, we believe, under a misapprehension of the real facts in the case, and we are confident that had the latter been called to the Court's attention, the expressions as to these particular statutes would not have been used.

The fact is, that this strong and extraordinary arm of the law is invoked by appellee to avoid the expense of building across the river and into South Omaha. This sweeping decree grants to appellee rights and privileges far beyond the most liberal construction of statutes or contracts.

It is no answer to say that appellee will pay the rent. There are many other considerations which enter into the right of appellant to use its own property in its own way, than the one that if another is permitted to use its property, that other will pay it rent.

By the terms of this decree appellee is permitted to enter and use appellant's premises, its bridge, its main line, its side tracks, its terminal facilities, its warehouses, its depots at Council Bluffs, Omaha, and South Omaha, necessitating consultations, conferences, arrangement of schedules, operation of trains, and a multitude of other acts and doings which necessarily follow from close association, and to all of which appellant is opposed. It does not desire this arrangement, declines to enter into this alliance, refuses to make this co-partnership, and confidently asserts that there is no justice or equity in the prayer of appellee for relief, and that the decree of the Court below is wrong in fact, in principle, and law.

We respectfully ask that the judgment and decree of the Court below be reversed.

October, 1905.

JOHN N. BALDWIN,
MAXWELL EVARTS,
Of Counsel for Appellant.

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# ITED STATES SUPREME COURT.

OCTOBER TERM, 1904.

SON CITY & FORT DODGE
AILROAD COMPANY,
*Complainant and Appellee,*

vs.

ION PACIFIC RAILROAD COM-
PANY,
*Defendant and Appellant.*

## STATEMENT OF FACTS.

Before stating the facts a brief statement will e made of the organization of the plaintiff, defendnt, and the various other Pacific Railroad Comanies. For convenience, the complainant will be nown as the "Mason City Company;" the various Pacific Companies as the "First Pacific Company," "Second Pacific Company" and "Third Pacific Company."

Organization of First Pacific Company;

The original Union Pacific Railroad Com was incorporated under the Act of Congress of 1st, 1862, and will be herein known as the "Firs cific Company."

of Second Pacific Company;

The Union Pacific Railway Company was consolidated company of January 24th, 1880, and be herein known as the "Second Pacific Compa

of Third Pacific Company.

The defendant, the Union Pacific Railroad pany, was incorporated in the latter part of the 1897, under the laws of Utah, and is herein know the "Third Pacific Company."

Questions involved in this case.

This is an appeal from the decree of the Ci Court of Appeals of the Eighth Circuit affirming decree of the Circuit Court of the District of braska, granting the Mason City Company the e and joint use of the Third Pacific Company's br across the Missouri River between Council Bl Iowa, and Omaha, Nebraska, its Union passenger tion at Omaha, and its main and passing rail tracks between Council Bluffs, Omaha and So Omaha, upon the same terms and conditions speci in the contract between the Union Pacific Rail Company, the Chicago, Rock Island & Pacific R way Company, and the Chicago, Milwaukee & Paul Railway Company, which contract was s tained by the Supreme Court of the United State

Union Pacific Railway Company v. Chicago, etc. Railway Company, 163 United States, 564.

The controversy in this case involves the same property between Council Bluffs, Omaha and South Omaha, that was involved in that case, in which this court held that under the charter of the Union Pacific Company and the Bridge Acts, a duty was imposed upon the Union Pacific Railway Company to allow any other company the joint use of the bridge and railway tracks above described, on payment of reasonable compensation. These acts are printed in Appendix D to this brief, and are as follows:

Act of Congress of July 1, 1862, (12 Stat. 489); July 2, 1864, (13 Stat. 356); July 25, 1866, (14 Stat. 244); February 24, 1871, (16 Stat. 430).

The Mason City Company had, prior to the entry of this decree, purchased and constructed a line of railway from Hampton, Iowa, and from Manly Junction, Iowa, through Fort Dodge to Council Bluffs, where it connects with the Third Pacific Company's tracks. At Hampton and at Manly Junction it connects with the Chicago Great Western Railway, which latter company operates it, thereby constituting a through line of rail from Chicago, to St. Paul, Minneapolis, Omaha, Kansas City, and other places.

The Mason City Company claims the right to use this property under said Acts of Congress, and also under a contract entered into between the City of Omaha, the County of Douglas, Nebraska, and the Union Pacific Railroad Company, under which contract the Union Pacific, its successors and assigns, in consideration of receiving about $450,000 bonus, agreed that the trains, cars and engines of all railroads then or thereafter running into or out of Omaha and Council Bluffs, should have unobstructed access and transit to and over said bridge and its approaches, and such roads should have the right to take or cause to be taken, their trains, cars and engines with their freight and passengers, over and across said bridge and its approaches, at reasonable compensation, without discrimination, hindrance, preference or delay.

The facts upon which these claims rest are substantially as follows:

Land grants and bonus.

The First Pacific Company was incorporated under the Act of Congress of July 1st, 1862. It was given a large grant of lands, and also a bonus of $16,000 per mile in government bonds. On March 7th, 1864, President Lincoln fixed as the eastern terminus of said railroad a "point in the western boundary of the state of Iowa east of and opposite to the east line

Section 10, in Township 15, north of Range 13, l east of the Sixth Principal Meridian in the Terri- y of Nebraska''—Bill of complaint, page 6, An- er, page 4. But the First Pacific Railroad Com- ny did not commence the construction of its line at s point. The initial point from which the con- uction commenced was a point at the north line of tion 10, Township 15, Range 13, in Nebraska Ter- ory; and from this point it constructed its line rough Omaha, a distance of 1038.43 miles, to the stern end of the line, where it connected with the ntral Pacific Company, about five miles northwest Ogden. This line was completed May 10, 1869— ecord, page 515. For this part of the line the gov- nment issued subsidy bonds to the amount of $27,- 6,512.00—Testimony of Alexander Millar, Record ge 461; Pacific Railroad Laws, Appendix D, page 3, Section 5, Act of 1862; pages 401 and 404, Sec- ons 8 and 11, Act of 1864. For this part of the line e Company also received a grant of lands amount- g to ten sections per mile within the limits of enty miles on each side of the road—Section 3, Act 1862, page 370, Section 4, Act of 1864, page 397. nder this act of 1864, the Government also consent- that the Union Pacific Railroad Company might ake a first mortgage on the said railroad prior to

Construction of Union Pacific.

Consent of Government to first mortgage.

the Government lien, for the same amount as the Government subsidy bonds. It was under this act that the Union Pacific Railroad Company made its first mortgage—Act of 1864, Section 10, page 403.

Bridge Act of 1871.

After the completion of this part of the railroad, the Union Pacific Company was without funds to build the bridge across the Missouri River to the eastern terminus of the line. It could only raise $16,000 per mile of government bonds, and $16,000 per mile of first mortgage bonds, with which to construct the bridge, its approaches, depots and tracks connected therewith. In this condition the First Pacific Company applied to Congress for relief. It sent General Grenville M. Dodge, with others, to Washington, and procured the passage of the Act of 1871, under which it mortgaged the bridge, depots and tracks, and raised money with which to construct them—Testimony of Dodge, Record, page 515. This Act is set forth in Appendix D of this brief, pages 427 and 428, and provided as follows:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, *That for the more perfect connection of any railroads that are or shall be constructed to the Missouri River, at*

*or near Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company be, and it is hereby, authorized to issue such bonds, and secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge over said river, and the tracks and depots required to perfect the same, as now authorized by law of Congress*; and said bridge may be so constructed as to provide for the passage of ordinary vehicles and travel, and said company may levy and collect tolls and charges for the use of the same; *and for the use and protection of said bridge and property, the Union Pacific Railway Company shall be empowered, governed, and limited by the provisions of the act entitled 'An act to authorize the construction of certain bridges, and to establish them as post roads,'* approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto: And provided, That nothing in this Act shall be so construed as to change the eastern terminus of the Union Pacific Railroad from the place where it is now fixed under existing laws, *nor to release said Union Pacific Railroad Company, or its suc-*

*cessors, from its obligations as established by existing laws: Provided also, That Congress shall at all times have power to regulate said bridge, and the rates for the transportation of freight and passengers over the same, and the local travel hereinbefore provided for.* And the amount of bonds herein authorized shall not exceed two and a half millions of dollars; Provided, That if said bridge shall be constructed as a drawbridge, the same shall be constructed with spans of not less than two hundred feet in length in the clear on each side of the central or pivot pier of the draw."

Act of 1866.

The Act of Congress referred to, was the Act of July 25th, 1866 (Appendix D, pages 420 to 427 of this brief), and among other things provided as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose, to build a bridge across the Mississippi River at Quincy, Illinois, and to lay on and

over said bridge *railway tracks, for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point shall be allowed to cross said bridge for reasonable compensation,* to be made to the owners of said bridge, under the limitations and conditions hereinafter provided."

First bridge mortgage.

The Bridge Act was approved February 24, 1871, and on April 1, 1871, the Pacific Co. mortgaged the bridge and its approaches as authorized by this Act —Exhibit 1, page 66, Bill of Complaint.

It made a supplemental mortgage on the 27th day of the same month, which is not material to this issue.

Turning to this mortgage we call the Court's attention to the description of the property and the recitals in the mortgage. The first recital is as follows, Bill of Complaint, page 66:

"Whereas, *By an Act of Congress of the United States, approved 22nd day of February, 1871, the Company is authorized to construct a bridge and railroad line across the River Missouri, between Omaha, in the State of Nebraska, and*

*Council Bluffs, in the State of Iowa, and to issue such bonds, not exceeding two millions and a half of dollars, as it might deem needful for that purpose, and to secure the same by mortgage on the bridge and its approaches and appurtenances.*"

The property so mortgaged is in part described as follows, Bill of Complaint, page 74:

"*all and singular, the said bridge over the River Missouri, between Omaha and Council Bluffs, and the approaches thereof, and the appurtenances belonging thereto, including all parts and portions of the said bridge now constructed or hereafter to be constructed, and the depots at Council Bluffs and Omaha as aforesaid, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances,* and to connect the same with the neighboring lines included in this conveyance as well the lines and tracks now constructed as those which may hereafter be constructed, and also all estates, terms and rights of way of the said bridge, approaches and appurtenances, as well now held by the Company as to be hereafter acquired by it, and all the rights and privileges of the said Company of, in or to the said bridge, approaches or appurtenances, or

touching, concerning or appertaining to the maintenance, use and occupation thereof."

Right to fix tolls.

Article I of the mortgage gave the Trustees the ght to fix tolls in the event of a default as follows, ll of Complaint, page 69:

"The Trustees * * * shall, so long as any of said bonds shall be outstanding, or unpaid, have the right to fix the tolls to be levied upon all property and passengers to be transported over, or which shall use or have the benefit of the said bridge, or the depots connected therewith at Council Bluffs, or Omaha, or the lines of track required to connect the said bridge with the railways having their terminus at Omaha and Council Bluffs."

Consolidation of Pacific Companies.

The Bill alleges, and the answer admits the consolidation of the various Pacific Railway Companies nder the head of the Union Pacific Railway Company, herein known as the Second Pacific Company. This consolidation took place about January 24th, 1880.—Bill of Complaint, page 15; Answer, page 9; Articles of Consolidation, Record, page 410, *et seq.* After this consolidation the Second Pacific Company made a renewal bridge mortgage—Exhibit No. 3, Bill page 95, *et seq.* This mortgage was dated on Octo-

Renewal bridge mortgage.

ber 1st, 1885, and also recited that under the Act of 1871, the Union Pacific Railroad Company was authorized to construct a bridge and railroad lines across the Missouri River, and to make a mortgage and to secure the same upon the bridge, its approaches and appurtenances. The description of the property contained in this mortgage in part is as follows, Bill of Complaint, pages 101 and 102:

> "*All and singular the bridge, approaches and appurtenances thereto, over the Missouri River, between Council Bluffs, Iowa, and Omaha, Nebraska, mentioned and described in said Act of Congress, approved February 24th, 1871, together with the rents, earnings, issues, tolls, incomes and profits thereof, including all parts and portions of said bridge, now constructed or hereafter to be constructed, and the depots, at Council Bluffs and Omaha aforesaid and the railroad thereover, and the lines and tracks required to perfect said bridge, its approaches and appurtenances, and to connect the same, with the lines of any railroads that are now or shall hereafter be constructed to the Missouri River at Council Bluffs, Iowa, or Omaha, Nebraska*, a map and description representing and describing the general features of which

property is hereto annexed and made a part hereof; but the same shall not be considered exclusive of other property covered hereby; and also all the estates, lines, rights of way, as well now held by the Company as to be hereafter acquired by it, and all the rights and privileges of the Company, of, in or to the said *bridge, approaches, and appurtenances*, or touching, concerning, or appertaining to the maintenance, use and occupation thereof; and also all and singular the franchises now owned, possessed, or acquired, or which shall hereafter be owned, possessed or acquired, by said railway company in respect of said bridge, approaches, and appurtenances thereto, and railroad thereover."

This mortgage had the same provision in relation to fixing tolls on the lines of track required to connect the said bridge with the railways having their terminus at Omaha and Council Bluffs—Article 1, Mortgage, Exhibit 3, page 95, Bill of Complaint.

What the bridge approaches, tracks, etc., included.

A reference to the map attached to this mortgage (Bill of Complaint page 120) will show that as first constructed, the bridge, its approaches and depot, and tracks connected therewith, extended from Council Bluffs to about Twentieth Street in Omaha,

but we call the Court's Attention to the fact that this map is stated in the mortgage not to be considered exclusive of other property. The Answer admits the making of these mortgages (Answer, pages 9 and 10), and also contains the following specific allegation—Answer, page 6:

Bridge was built with money raised on bridge mortgage bonds authorized by Act of 1871

"Further answering defendant admits that the money raised by certain so-called bridge mortgages in said bill described was used by The Union Pacific Railroad Company, during the years 1871 and 1872, in constructing a bridge across the Missouri River, and tracks and depots connected therewith, extending from the eastern terminus of the Union Pacific Railroad Company at Council Bluffs, in the State of Iowa, to a point at about Twentieth Street, in the City of Omaha, Nebraska, a distance of about three and ninety-eight hundredths miles; but it alleges that the said bridge was constructed and the said terminal facilities, lands, tracks and depots connected therewith, were acquired, constructed, owned and operated by said railroad company under the authority of the Acts of Congress of 1862 and 1864, aforesaid."

PAGE CUT OFF

The answer also contains the following denial and allegation, page 8:

> "It admits that no subsidy bonds or patents of land were delivered by the United States in respect of any of the so-called Bridge Division property. It denies that the same was constructed under or by virtue of the Act of 1871, or under the authority thereof, or subject to the conditions and limitations as to the use thereof by other railroads as in said bill alleged, and it submits that by reason of the facts hereinafter stated, that whatever burdens, conditions or limitations were by said Act of 1871, imposed upon said railroad company or its successor, the said The Union Pacific Railway Company, are of no binding force or effect, as against the said property of this defendant."

Act of 1871 binding on first and second Pacific Companies.

We cannot believe that it will be seriously contended that the First Pacific Company, and the Second Pacific Company, did not accept the terms and conditions of the Bridge Act of 1871, and the Act of 1866, referred to therein. On this point the testimony is overwhelming. It appears by the testimony of General Dodge, Record, page 515, that after the completion of the main line of the road on May 10,

1869, the Union Pacific Company was without means with which to build the bridge; that it applied to Congress and procured the passage of the Bridge Act of 1871. This of itself is sufficient to show its acceptance, but in addition to this, it mortgaged the bridge, depots and tracks connected therewith, as authorized by this Act, and in the mortgage it was recited that by the Act of Congress of 1871, the company was authorized to construct the bridge and railroad line across the Missouri River, between Omaha in the State of Nebraska, and Council Bluffs in the State of Iowa, and to issue bonds as might be needful for that purpose, and to secure the same by mortgage on the bridge and its approaches and appurtenances. It is admitted that it did issue the bonds and with the money constructed the bridge, depots and tracks. In the Bridge Mortgage of 1885, made by the Second Pacific Company, consolidated under the Act of Congress, the same recitals are contained. It further appears that, as authorized by this Act, the First Pacific Company and the Second Pacific Company, for many years did charge and levy bridge tolls for the use of the property between Council Bluffs and Omaha—Record, Volume 2, page 773.

Not only that, but during the receivership, bridge tolls were charged and a separate account

kept of the earnings, as authorized by this Act. It further appears that the Second Pacific Company, and the present Pacific Company, from 1890 down to and including 1898, made contracts with the various railroad companies, allowing them to run their trains over the bridge, depots and tracks connected therewith, from Council Bluffs to South Omaha, as authorized by this Act.

Donation of bonds by city and county.

It appears from the bill and answer, and the records introduced in this case, that during the years from 1868 to 1872, the city of Omaha, and the county of Douglas, donated to the First Pacific Company $450,000 of ten per cent bonds, to aid the Union Pacific Railroad in the construction of its bridge, approaches, depots and tracks connected therewith. The $200,000 of bonds issued by the city were sold and the proceeds thereof used to purchase the ground for depot and bridge approaches in the city of Omaha, and the said ground and the said county bonds of $250,000 were so donated on the conditions and covenants contained in a contract which is set forth in full in the deed of said depot property by Alvin Saunders, Trustee, to the Union Pacific Railroad Company, contained on pages 20 to 30, of the Bill of Complaint, which deed was recorded on February 2, 1872, in the office of the county clerk of Douglas coun-

Deeds of depot property.

ty, as required by law. This original deed was introduced in evidence—Testimony of Bettis, Record, page 21. Mr. Bettis testified that this deed was among the records of the Union Pacific Railway Company, when it was taken over by the defendant, that it was among the deeds and titles of the present defendant company. He also testified that the original contract between the city, county and the First Pacific Company, could not be found in the office of the Union Pacific Railroad Company. The answer admits the making and recording of the Saunders deed —Answer, pages 10 and 11, and admits that it was accepted by the First Pacific Company—Answer, page 11; and admits that the grounds described in the said Saunders deed, have been used as a part of the depot grounds, yards, terminal facilities and approaches at Omaha, between the west end of the bridge and the said junction point at or near Twentieth street, in the City of Omaha—Answer, page 12. The answer, however, alleges that in respect to the voting of bonds by the City and County, and the purposes for which said County and City voted the same, or as to whether any part of the same was used for the purchase of the real estate described in the Saunders deed, the defendant has no knowledge. This, possibly, raises an issue of fact. It is conclusively

Saunders deed a link in defendant's chain of title.

Conditions upon which lands were conveyed.

ed, however, that the allegations of the bill are . The deed, which is a link in the chain of the ndant's title, to the depot grounds and bridge roaches, recites that the lands were paid for by City of Omaha, and conveyed to Saunders to be l in trust, to be deeded on the terms and condi- s stated in a certain contract made between the y, the County, and the First Pacific Company, ed January 1, 1872, and contained in the deed— l of Complaint, pages 20 and 21. That contract ites the receipt of the bonds of Douglas County, in sum of $250,000, and the receipt of the lands from City. It further appears by the testimony of . Kountze, one of the committee appointed by the y Council to negotiate the bonds of the City to rchase the depot grounds and bridge approaches, d enter into a contract with the Union Pacific Rail- ad Company, that the $200,000 of bonds were sold, d the said lands in the Saunders deed purchased th the proceeds—Testimony of Kountze, Record, ge 521. The original contract cannot be found— stimony of City Clerk, City Treasurer and the unty Clerk, Record, pages 132 and 133, but a copy the contract is contained in the minutes of the eetings of the Common Council of the City of Oma- a, Record, page 263, *et seq.* It further appears by

the records of the City Council, introduced in evidence, that at a council meeting held January 8, 1868, the following resolution was passed, Record, page 247:

Resolution of City Council authorizing voting of bonds.

"Be it resolved by the City Council of the City of Omaha, That the City of Omaha assume and bear the expense and cost of securing to the Union Pacific Railroad Company, free of cost, the right of way for a track from the bridge crossing of the Missouri River, known as Line Number Two (2) or Lower Omaha Crossing, to its intersection with the track of said company already built, and also for a track from said crossing to the Machine Shops and Depot of said road, and also such grounds for depot purposes as may be deemed necessary by the Chief Engineer of said road, and being about twelve (12) acres, as shown on the maps in the Engineer's office, and, in case the upper crossing shall be adopted, and the bridge located at or near that point, we pledge the like aid; And that the Mayor be and is hereby directed to call an election for the purpose of deciding whether or not a loan shall be made by the City of a sum sufficient for that purpose."

Special city election to vote on bonds.

It appears that on June 30, 1868, a special elec-
n was called for the purpose of voting $150,000 of
nds "*for the purpose of paying for the necessary*
*ht of way and depot grounds in said City of Oma-*
*required by the Union Pacific Railroad Company,*
*connection with its bridge across the Missouri Riv-*
" It further appears that thereafter steps were
ken to vote $50,000 additional bonds, and to in-
ease the interest upon the first bonds to ten per
nt. These bonds were voted—Record, page 252.
he record shows that the Mayor was authorized to
thograph the bonds—Record, page 253; and also
ontains the following resolution, passed May 29,
869—Record, pages 254 and 255:

"Council Chamber, May 29th, 1869.

Ald. Evans offered the following resolution which was adopted:

Resolution of City Council, May 29, 1869.

Whereas, by resolution of the City Council passed March 24th, 1868, Ezra Millard, Augustus Kountze, O. P. Hurford, George L. Miller, Enos Lowe and Alvin Saunders were appointed a committee to represent the interests of the City of Omaha before the Board of Directors of the Union Pacific Railroad Company in New York and other Railroad Com-

panies in any matters arising before said Companies involving the interests of said City.

And Whereas, in pursuance of the action of said committee in the premises in securing the location of the Railroad bridge across the Missouri River at Omaha, the qualified voters of said City did duly authorize the issuing of the bonds of said city to the amount $200,000 for the purpose of securing the location of said bridge at Omaha, and for purchasing for said Railroad Company the right of way and depot grounds in the City of Omaha.

Therefore, Resolved, That said Ezra Millard, Augustus Kountze, O. P. Hurford, George L. Miller, Enos Lowe and Alvin Saunders be and are hereby authorized and empowered to negotiate the said bonds without loss to the City, and to adjust and settle all claims against the said City for securing the location of said bridge, the right of way and depot grounds as aforesaid. And the City Clerk is hereby directed to seal and deliver to said parties the said bonds, taking therefor their receipt for the same duly numbered and stated, and said committee are required to make report of their action in the premises to the City Council."

The record also shows that the City borrowed ey to pay the interest on these bonds—Record, e 257. It also appears that the Union Pacific iroad Company petitioned the City to vacate the ets situated within the limits of the depot unds, so-called, which were agreed to be acquired hout cost to the company, by the City of Omaha donated to said company—Record, pages 259 and ; that this petition was passed on by the city; t it was granted, and the city authorities directed convey the said streets and alleys according to the ayer of the petition. This conveyance was made the 27th day of July, 1872, and was introduced in dence--Record, page 275. The streets and alleys vacated are marked upon the map, Complainant's hibit, 4 a and have ever since been used as a part the depot grounds and bridge approaches. It also pears that on January 2, 1872, Saunders was au- orized to convey the depot grounds to the First acific Company, in accordance with the terms and nditions of a certain contract entered into between e said company and the City and the County, which greement was spread upon the minutes of the meet- g on February 1, 1872—Record, pages 261, 263.

Petition of Railroad Company to vacate streets.

On the part of the county, it appears that on pril 30, 1868, a special election was called to be held

Special county election to vote on bonds.

on June 6, 1868, to submit to the voters the proposition of voting $250,000 of bonds, the object stated in said resolution being as follows:

Resolution authorizing delivery of bonds by county.

"Shall the County of Douglas, for the purpose of securing the location and aiding in the construction of a railroad bridge across the Missouri River between the Union Pacific Railroad, and such other roads as may seek a connection therewith at Omaha in said county, contribute thereto in county bonds the sum of $250,000?" etc.

A resolution appears on January 8th, 1872, reciting that the bridge bonds were voted on July 3, 1868, and on January 8, 1872, the following resolution was adopted by the Board of County Commissioners —Record, page 272:

"(Commissioners' Record C, 108)

Omaha, Neb., January 8th, 1872.

Board met pursuant to adjournment. Among other proceedings the following:

On motion the Board adopted the following, to-wit:

Resolved, That the bonds voted for in aid of the construction of the Union Pacific Railroad Bridge, to the amount of $200,000.00, be immediately signed and dated January 1st, 1872, to be delivered to the proper authorities

of the Union Pacific Railroad Company, *only upon condition, that the contract, a draft of which is filed with the County Clerk, and deposited in his office, shall be duly and legally executed by the proper officers of the Union Pacific Railroad Company.*

Resolved, That in the event of the execution and delivery by the said Union Pacific Railroad Company, of the Contract referred to in the foregoing Resolution, the bonds for the remaining $50,000.00, voted for in aid of the construction of said Bridge, being the last installment provided for that purpose, shall be signed as of the date when the said Bridge shall be completed and finished, so as to be in good and sufficient order for the passage of trains, and issued and delivered to the said Union Pacific Railroad Company, as soon as the evidences of the completion of said Bridge as aforesaid are properly presented to the board of County Commissioners."

It appears that $50,000 of the bonds were only to be delivered after the bridge was completed. There next appears a receipt by the Union Pacific Railroad Company of the last $50,000 in full for the bonds. It will be noted that this resolution authorizes the de-

Receipt of Union Pacific for bonds.

livery of the bonds only upon the conditions stated in the contract made between the Union Pacific Railroad Company, and the City and County.

**Tripartite agreement in Saunders deed.**

We now come to the contract contained in the Saunders deed. This deed was made on the 20th day of January, 1872, and forms a link in the chain of title of the defendant company, and contains the following agreement—Record, pages 197 to 199:

> "Agreement made this first day of January, in the year of our Lord one thousand eight hundred and seventy-two, by and between the *Union Pacific Railroad Company, authorized by law of Congress to build a bridge across the Missouri River, at or near Council Bluffs, Iowa, and Omaha, Nebraska, and its successors, party of the first part, and the City of Omaha, Nebraska, and the County of Douglas, in the State of Nebraska, parties of the second part, Witnesseth: That whereas, the parties hereunto desire to arrange for the more perfect connection of any Railroads that are or shall be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska.*
>
> Now, in consideration of the premises and the receipt by the party of the first part of the Bonds of said Douglas County, to the amount

of two hundred and fifty thousand dollars, and in further consideration of the receipt by the party of the first part of a deed from the said City of Omaha, to certain real estate in said City, known as the Depot grounds and right of way.

The party of the first part, for itself and its successors, covenants and agrees to and with the said County of Douglas, and the said City of Omaha, as follows, to-wit:

*First.* That it will construct, complete and maintain a Railroad Bridge over the Missouri River at the said City of Omaha.

*Second.* The eastern terminus of the Union Pacific Railroad shall be and remain at said City of Omaha.

*Third.* That after its Missouri River Bridge at the City of Omaha is completed and ready for use, the said Union Pacific Railroad Company will make up all its regular West-bound passenger and freight trains on the grounds which the people and City of Omaha propose as above to deed to said Union Pacific Railroad Company, and as is already mapped and platted, that is to say, All passengers and freights coming from the East on all lines of

road seeking a connection with said Union Pacific Railroad at its Eastern terminus, shall be delivered and transferred to the Union Pacific Railroad Company upon said Depot grounds where the Union Pacific trains shall be made up for the West, and that said party of the first part will, after such bridge completion transfer upon said grounds to the various Railroads, that do or may begin or end in Council Bluffs or Omaha, all its passengers, baggage, express matter, mails and freight, North, East or South bound.

*Fourth.* That said Union Pacific Railroad Company will within one year from the date hereof, expend in improvements in the building of passenger and freight depots, general passenger and freight offices, land offices and transfer and telegraph offices upon said grounds, a sum that shall not be less than one hundred thousand dollars, and to maintain these buildings and offices thereon.

*Fifth.* All machine, car shops and other manufactories required for the use of said Company, at its Eastern terminus, all permanent offices of the Company required for the transaction of its business, including the Land

Department, general Superintendent's Offices, general Passenger and Freight Offices, Warehouses for the Company's use, &c., shall be erected and maintained at Omaha.

Providing for the use by all other railroads.

*Sixth. *That under proper rules for their regulations to be prescribed by said party of the first part, the trains, cars and engines of all railroads now or hereafter running into or out of Omaha and Council Bluffs, shall have unobstructed access and transit to and over said Bridge and its approaches, and such roads shall have the right to take or cause to be taken their trains, cars and engines, with their freight and passengers over and across said Bridge and its approaches, at reasonable compensation without discrimination, hindrance, preference or delay.* Provided, however, that the Union Pacific Railroad Company shall in all cases have the option of substituting its own engines for those of such other roads in the operating of its said Bridge, receiving reasonable compensation therefor. The object of this clause being to make a virtual and operating connection upon said transfer grounds, between all the railroads desiring such connection which do or may begin or end in or pass through Omaha

*Italics are ours.

or Council Bluffs, and the trains and business of said roads. In Witness Whereof, the said party of the first part has caused these presents to be executed in triplicate by its Vice-President hereby binding said Union Pacific Railroad Company and its successors, to the covenants and agreements herein contained, and the parties of the second part, by their authorized officers, have hereunto set their hands in triplicate the day and year first above written."

After conveying all of the property which is specifically described, and which will be found colored yellow upon the map, Complainant's Exhibit 4a, the deed contains the further clause—Record, page 201:

"Hereby limiting the use of all said premises to the legitimate purpose of depot and transfer grounds and grounds for right of way and approaches to the said Missouri River Bridge, subject to the conditions and restrictions contained in the contract above recited."

**The intention of Congress, the City of Omaha, and the County of Douglas to establish a connecting link.**

When the Congress, the City of Omaha, and County of Douglas, provided for a more perfect connection of any roads that then were, or should thereafter be constructed to the Missouri River, at or near

Council Bluffs, Iowa, and Omaha, Nebraska, and provided for the use of the bridge, approaches, depots and tracks connected therewith, by other companies, for the purpose of making said connection, what tracks was it intended that the other lines of road should have the right to run their trains over for the purpose of making said connection between the eastern and western lines? Our contention is that it was such property as was necessary to connect the eastern lines constructed to the Missouri River, at or near Council Bluffs, Iowa, and at or near Omaha, Nebraska. As bearing upon this question the following testimony was submitted:

Lines connecting at Council Bluffs.

All the lines of railway reaching the Missouri River at Council Bluffs, connect with the Union Pacific Railroad at the transfer depot in Council Bluffs. Complainant's Exhibit 4c will show the different tracks of the said companies, and the manner of connecting. They are as follows:

Chicago, Burlington & Quincy Railway,
Omaha & St. Louis Railway (now the Wabash),
Chicago, Rock Island & Pacific Railway,
Chicago, Milwaukee & St. Paul Railway,
Kansas City, St. Joseph & Council Bluffs Railway,
Chicago & Northwestern Railway.

The Sioux City & Pacific Railway also connected at one time, but this is now owned by the Chicago & Northwestern Railway Company. The Illinois Central Railroad connects, but it does not use the Union Pacific Bridge; it only uses the passenger station, and certain tracks in the City of Omaha—Testimony of Horace G. Burt, Record, page 16.

Lines connecting west of river.

On the west the connections are shown on Complainant's Exhibit 4d. They are as follows:

Fremont, Elkhorn & Missouri Valley Railway, over an intervening strip of track lately constructed by the Chicago & Northwestern Railway Company; the Chicago, Rock Island & Pacific Railway, about 1500 feet below the South Omaha station of the Union Pacific Railroad Company; the Missouri Pacific Railway, near Gilmore Junction; the Chicago, Burlington & Quincy Railway near the Missouri Pacific connection; the Omaha Belt Line Railway connects near the connection of the Chicago & Northwestern Railway; and the Union Stock Yards Railway also connects with the Union Pacific Railroad near the station in South Omaha, this railway has about thirty miles of track, is owned by the Union Stock Yards Company, and all of the packing houses and stock yards are situated exclusively upon its tracks.—Testimony of Scott King, Record, page 382.

*et seq.* So that all of the business of the various packing houses and of the stock yards is necessarily done over the tracks of the Union Stock Yards Company. This business, as appears by the testimony of Mr. Kenyon, amounts to 172,204 cars per annum—Kenyon's testimony, page 115. It therefore appears by this testimony that all of the lines from the East connect with the Union Pacific tracks in Council Bluffs, and all of the lines from the West connect with the Union Pacific tracks at or near South Omaha, leaving the intervening space, over which all of these lines of railway run their trains, in whole or in part, as we shall show by the testimony. These connections are shown not only by the maps, but by the testimony of Augustus Schermerhorn, page 107, *et seq.*; John B. Berry, page 84, *et seq.*; Horace G. Burt, page 9, *et seq.*

How Pacific Companies have treated this link.

The next question of fact is—what has the Union Pacific Company done in carrying out this Act of Congress and the Saunders deed? The testimony clearly shows that the First Pacific Company, the Second Pacific Company, and the present company have always allowed all of the railroads reaching the Missouri River at or near Council Bluffs, and at or near Omaha, to use all, or some part, of these tracks over which to run their trains to a connection with

these various lines. They have treated it as a link, or terminal, between the said eastern and western lines. Mr. Burt in his testimony, in connection with the contracts introduced as a part of the testimony of the Auditor, Mr. Bettis, shows the different parts of this link used by the various companies, and the contracts under which such property is used—Record, page 8 and page 21, *et seq.*, as follows:

Rock Island contract.

The Chicago, Rock Island & Pacific contract, dated the first day of May, 1890, for the term of 999 years, attached to Bill of Complaint, Exhibit 4, page 121. It is admitted that the Union Pacific Railway Company refused to carry out this contract, that suit was brought to compel the enforcement of the same, and that judgment was finally rendered in the Supreme Court of the United States specifically enforcing the terms of the contract. This company uses the main and passing tracks between the eastern terminus of the Union Pacific Railroad in the City of Council Bluffs, and a line drawn at right angles across said tracks within one and one-half miles southerly from the present passenger station at South Omaha.

Milwaukee contract.

The Chicago, Milwaukee & St. Paul Railway Company made a contract for the use of the same property dated at the same time, for the term of 999

years, Complainant's Exhibit 5, attached to the Bill of Complaint, page 161; it uses identically the same property — Testimony of Burt, Record page 13. Subsequently, and on May 26th, 1898, Record, page 23, the present defendant company entered into a new contract with the Chicago, Milwaukee & St. Paul Railway Company, for the use of the same property for the term of 999 years on identically the same terms, with the exception that the Milwaukee Company agreed to pay its proportion of interest at four per cent for any extraordinary improvements upon or across roadways or tracks ordered by the City authorities.

Northwestern contract.

On or about May 26th, 1898, the Chicago & Northwestern Railway Company entered into a contract with the Union Pacific Company exactly like the last Milwaukee contract for the term of 999 years for the use of the same property, and on identically the same terms—Testimony of Burt, page 16; Contract, Record, page 31.

Missouri Pacific contract.

It is unnecessary to go into the details of all of the other contracts. It is sufficient to say that the Missouri Pacific Company uses the tracks of the Union Pacific Company for its passenger trains from its connection near Gilmore to the Union Depot in Omaha, and for its freight trains from its connection

near Gilmore, to a connection with the Belt Line near the north edge of the corporation limits of South Omaha—Record, page 13.

C., B. & Q. contract.

The Chicago, Burlington & Quincy Railway Company runs its passenger trains from the eastern terminus of the Union Pacific Railroad Company across the Union Pacific bridge, to a connection with the depot of the Burlington Company in Omaha; and the Kansas City, St. Joe & Council Bluffs trains use the same property—Burt's Testimony, Record, page 15. The Burlington Company also uses that part of the Union Pacific tracks from the junction near Gilmore, for its freight and passenger trains, to a junction with the Stock Yards Company lines near the passenger depot in South Omaha — Testimony of Schermerhorn, Record, page 109.

Illinois Central contract.

The Illinois Central Railroad Company runs its trains over the Terminal line, connects with the Union Pacific in North Omaha, and runs its passenger trains into and out of the Union Depot over the Union Pacific tracks. All of these roads pull their trains with their own engines—Burt's Testimony, Record, page 16.

Union Depot contract.

It is alleged in the bill, and admitted in the answer, that in September, 1898, the Third Pacific Company entered into a Union Depot contract with the

Chicago & Northwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company, which contract is attached to the Bill of Complaint, Exhibit No. 6, page 173; Answer page 23.

Supplemental Union Depot contract.

There is a supplemental contract, Exhibit No. 7, page 200. By these contracts the Company carved out a Union Depot and grounds, situated principally upon the property deeded in the Saunders deed. See maps attached to Exhibits Nos. 6 and 7; see also Complainant's Exhibit 4a—property within the yellow lines—Testimony of Berry, Record, pages 83 and 84. By this contract it is specifically stated the terms and conditions on which all of the Companies have the right to use the tracks and depot. Article 14 of the contract, Bill of Complaint, page 193, is as follows:

> "It is agreed that the following named Companies shall be admitted to a joint use of said depot and appurtenances, in case they or either of them shall so desire, and shall become a party to this agreement by subscribing to the copy of the same which shall be in the possession of each of the parties hereto:
>
> Missouri Pacific Railway Company; Fremont, Elkhorn & Missouri Valley Railroad

Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Illinois Central Railroad Company; The Wabash Railroad Company, and the Omaha & St. Louis Railroad Company; also that any other Railroad Companies, by and with the consent of the party of the first part, and upon like subscription to the copy of this agreement in the possession of the parties hereto as aforesaid, shall be admitted into said depot. In case of the admission of any Company or Companies as herein provided, the basis of fixed compensation shall be changed so that the same shall be borne equally by all the Companies using said depot; and the cost of operation and maintenance shall be borne on the basis hereinbefore provided. It being also understood that in the event of admission of any Company as a party to this agreement as herein provided the duties and privileges of such Company shall be precisely as are herein defined in respect to the second, third and fourth parties."

Construction, extension, and enlargement of U. P. Co.'s tracks, bridge, and facilities through Omaha to Gilmore.

It appears by the testimony in this case, and by the admissions in the answer, that originally the Union Pacific Railroad Company constructed a sin-

gle track railway from section 10, down through the City of Omaha, substantially where the present track is located, and through what is now South Omaha, and that in 1871, under the Bridge Act, it constructed the bridge and the line from the eastern terminus at Council Bluffs, to Bridge Junction, which is about Twentieth Street in Omaha. The east approach of the bridge extends from the Union Pacific transfer station in Council Bluffs, where the Mason City Company connects with it, to the bridge proper. Nearly all of this approach is constructed on a high embankment, which, at the end of the bridge, is approximately fifty feet; a mile east, it is substantially twenty feet; and gradually descending until it strikes substantially the level of the country, at the connection. Record, Vol. 1, pages 148 and 149.

The stock yards were established at South Omaha about 1883 or 1884—Testimony of Schermerhorn, Record page 97, and of Scott King, Record page 136; after the establishment of the stock yards the Union Pacific Company constructed a second track, or double track, from the Union Pacific station, about where it is now located, south, passing Twentieth Street to the summit, which is at about the crossing of the Burlington line—Record, pages 97-106; about 1884 it extended this a short distance

below the South Omaha station, and about 1890 it was extended to Gilmore, which still is the end of the double track, the line beyond that being a single track road. It appears that the bridge was re-constructed, and a double track laid thereon, in 1885 or 1886—Record, page 96-97. The other tracks were added from time to time as the business of the Company demanded—Answer, page 7. There are two main tracks, therefore, extending from the eastern terminus to Gilmore, and various side tracks, used for switching purposes and storage of cars—Testimony of Schermerhorn, Record, page 99. It also appears in this case that from the eastern terminus of the line in Council Bluffs to Gilmore, where the double tracks end, is a yard, or terminal, and that it is operated as such—Testimony of Schermerhorn, Record, page 100. We introduced in evidence the time table of the defendant Company, Record, page 109, in which this is called the "Bridge District," and shows that it is operated as a yard or terminal, the trains of all roads running over it, not on regular time, but as the business demands, and with their own engines, to be sure, under rules and regulations, as all roads are operated. It therefore appears that these tracks have been constructed and extended from Twentieth Street to South Omaha as the cities

Council Bluffs to Gilmore, a terminal.

South main track an extension of bridge track.

grew, and as the business grew, for the purpose of connecting the lines reaching South Omaha with the lines to the East. Schermerhorn's testimony shows that the south main track was purely an extension of the bridge track, and whether it was or not, these tracks are the ones that are necessary for any company to use to connect with the roads ending at South Omaha.

Population of cities; practically one city.

It appears also by the testimony that Omaha is a city of about 125,000 people; that South Omaha has about 26,000 people; that the two cities are connected by the same street railways, gas and electric lines and water pipes; that the streets are continuous between the two cities; that they are practically one city, although separate corporate entities; and that South Omaha has an enormous business, employing about twenty-five per cent. of the wage earners of the State of Nebraska—Testimony of Kenyon, Record, page 121. It therefore appears that so far as the business is concerned it is a part of the City of Omaha.

Description of country between Omaha and So. Omaha.

It further appears by the topographical maps introduced in evidence, Complainant's Exhibit 7 and 8, that from the Union Depot in Omaha to South Omaha the Union Pacific line runs most of the way through a narrow valley with steep hills on each side;

that through this narrow space the Union Pacific and Burlington roads have constructed lines which practically fill all the space, and that it is not possible to build another line between Omaha and South Omaha, paralleling the Union Pacific and Burlington lines. The testimony also shows that the Union Pacific line, with its depot, runs through the very heart of the city of Omaha, and that on each side it is lined with large business blocks and dwelling houses—See photographs, Record, page 143, testimony of George W. Craig, page 121, *et seq.*, and page 134; of A. B. Stickney, page 388, *et seq.*

Negotiations with Burt for use of terminals.

It further appears that the proposition for the complainant company to use the Union Pacific Company's bridge, depot and tracks from Council Bluffs to South Omaha was made by Mr. Burt, President of the Union Pacific Company, who furnished the complainant a plan of connection in Council Bluffs, being the plan adopted by the court in the decree. —Complainant's Exhibit 4a, Record, pages 373 and 374; and that the Union Pacific Company never refused to allow the complainant to use the tracks until October 28, 1902. The testimony in this regard is substantially as follows:

Mr. Samuel C. Stickney went to Omaha to see Mr. Burt and asked him if he could make arrange-

ents to use the Union Pacific passenger depot in maha. He was then negotiating for the use of the ridge and terminals of the Omaha Bridge & Terinal Company. Mr. Burt said he did not wish any ore roads to enter by that route, as the Illinois entral Company did, as it was awkward and caused onfusion in the place, and he asked Mr. Stickney hy he did not use the Union Pacific bridge and racks all the way through the same as the Chicago, Milwaukee & St. Paul and the Chicago, Rock Island & Pacific Companies. Mr. Stickney asked him on what terms we could use the terminals, and Mr. Burt said that we could do so on exactly the same terms as the other roads, namely, $45,000 a year, and our share of certain expenses, which he could tell him more about in detail if he was interested. He then explained at some length what the arrangements were for handling the trains, and sent for the Auditor, who furnished Mr. Stickney with a detailed statement of the cost,—Record, pp. 365-6.

Thereupon Mr. Stickney wrote out a memorandum proposition for Mr. Burt to make, and left a copy of it with Mr. Burt. He produced the original memorandum in court, and the same is found on page 367, Record. Mr. Burt said in substance that the contract would have to be authorized by the Exec-

utive Committee, but that he would recommend it, because he thought it was for the interest of the Union Pacific Company to make the contract,—Record, p. 368.

On January 16th Mr. Stickney wrote to Mr. Burt a letter (Record, p. 369) asking him if he had taken the matter up with the Executive Committee. On January 31, 1902, Mr. Burt wrote Mr. Stickney in substance requesting him to wait until the complainant's road was well under way, or until the complainant could fix a definite time for its completion, which Mr. Stickney assented to,—Record, pp. 370-1; Mr. Burt furnished him a map showing the proper connection, and the Mason City Company constructed its line to the said connection.—See Exhibit 4a, map in evidence.

Mr. A. B. Stickney's testimony will be found on pp. 388 *et seq.* On this subject he testified in substance that in June, 1902, he called upon Mr. Burt with Mr. Samuel C. Stickney, the General Manager. His testimony is as follows—Record, page 393:

> "Mr. Baldwin: June, 1902, was the time of the conference between you and Mr. Burt.
>
> "A. (Continued.) Yes, June, 1902, I was down here with the General Manager of our company, and we called upon Mr. Burt,

and I said to Mr. Burt—but Mr. Burt in his previous conversation with the General Manager—well that is hearsay, and I didn't hear him say it—I said to Mr. Burt that we had progressed so far with the construction of the Mason City & Fort Dodge road that there could no longer be any reasonable doubt but what we were going to build it, and I asked him if he was still of the same opinion that the Union Pacific would like to, or would be willing to, make an arrangement with us to use their lines, their bridge and lines to South Omaha, and such facilities as they granted other railroads here. Mr. Burt said that as far as he was concerned he thought it would be for the interest of the Union Pacific to do it, and that while he had no authority to make a contract of that kind, he would be very glad to take the matter up with his people in New York, and he thought there was no doubt but what they would be willing to make the arrangement. I asked him if he would take the matter up at once and give us an early reply, and he said he would. I asked if he would like to have me take the matter up directly with his people in New York. Well, he said

he had no objections to that, but he thought it was unnecessary. The matter ran along for several months, for some time at least, and not hearing anything from it, I called upon Mr. Harriman one day."

Negotiations with Harriman.

He further testified, in substance, that he saw Mr. Harriman in New York, who said the fault was his rather than Mr. Burt's; that he had been so busy with other matters that he had not had time to give the matter consideration, and said that he would take the matter up. Mr. Stickney then turned the negotiations over to Mr. Kellogg, who, through Mr. Pierce, General Counsel of the Company, had the matter up with Mr. Harriman, and the negotiations ran along until about the 28th day of October, 1902. —Record, page 395. Neither Mr. Harriman nor any other officer of the company made any suggestion that the company would not make such a contract as proposed by Mr. Burt until about the 31st day of October, 1902, when Mr. Harriman sent for Mr. Stickney. Mr. Stickney's testimony on that point is as follows:

"The negotiations ran along in that way until about the time this suit was commenced, about the 31st day of October, 1902. Mr. Kellogg had an appointment with Mr. Harriman,

and Mr. Harriman was to notify him at my office. We waited until long after the hour and no answer came, and finally I said to Mr. Kellogg, 'Go out to Omaha and commence that suit.' After Mr. Kellogg left the office to go to the hotel and to his train, a boy came in and said Mr. Harriman would see Mr. Kellogg then, if he would come over to his office. I went over—Mr. Kellogg wasn't there—to see Mr. Harriman. We talked the matter over, and Mr. Harriman said, 'We have got plenty of room; we have got plenty of facilities to do your business there.' Said he, 'There is no objection on that account at all.' But he says, 'Stickney, I understand you are planning to build a road west of the Missouri river.' I told him no, there were no such plans at that time. Our plans were to build to Omaha, but whether we ever went any further west would probably depend on how well we were treated by the western roads. But at the present there was no plan for going any further than Omaha. 'Well,' he said, 'I think the Union Pacific would be willing to make a contract with you to use the bridge and facilities there as far as South Omaha on the same terms that

the Chicago, Milwaukee & St. Paul have for them, provided that the contract shall terminate whenever you undertake to start west of South Omaha with a road.' 'Well,' I says, 'Mr. Harriman, I have been trying to get at you for two or three months here, standing around and waiting for a month at a time with no other business except to see you, and I have been unable to see you; now are you prepared to say that the Union Pacific will make such a contract, and are you prepared to make such a contract?' Well, he said he wasn't prepared to make such a contract, but he thought probably the Union Pacific would make that kind of a contract. 'Well,' said I, 'I understand, Mr. Harriman, that under the laws, and the contracts that the Union Pacific made with the City of Omaha, etc., that we have a right to the use of that property, the same use that we would get from such a contract, and that our rights would not terminate if in the future we should build a line west from Omaha.' Well, he said he didn't know anything about that, but the Union Pacific wouldn't make any contract with us, except that contract contained an agreement that we should forfeit

our rights in case we started to build west. Well, I then told him that we should commence a suit to assert what we considered to be our rights under the laws, and it didn't seem to scare him a little bit."

earing was had before Judge Munger, who written opinion, Transcript of Record, p. 252; final decree was entered on August 12, 1903, ng the complainant the use of the main and g tracks from Council Bluffs to a connection he Union Stock Yards Railroad, and the other ads connecting with the Union Pacific Railroad, th Omaha, in the State of Nebraska, including idge, and the Union Depot in Omaha, on the terms and conditions the same is used by the railroad companies, as appears from the con- in evidence, as follows, to-wit:

Decree of Circuit Court.

Rock Island Contract, dated May 1, 1890, Exhibit 4, Bill of Complaint, page 121;

Milwaukee contract, same date, Exhibit 5, Bill of Complaint, page 161;

New Milwaukee Contract, dated June 10, 1898, Record, page 23;

Northwestern Contract, dated June 14, 1898, Record, page 31;

Union Depot Contracts. Exhibits 6 and 7, with all the companies, dated September, 1898, and August 1, 1899, respectively, Bill of Complaint, pages 173 to 207.

An appeal allowed, but stay of injunction refused.

Judge Munger allowed an appeal, but refused to grant a stay of the mandatory injunction, and the Mason City Company immediately thereafter commenced to run its trains over the tracks and use the Union passenger station of the Pacific Company, under the terms of the decree, and has ever since used the same under the same terms and conditions as the other companies.

Decision of the Court of Appeals.

On an appeal the case was heard before Judges Sanborn, Van Devanter and Hook, and on February 29, 1904, an opinion was filed and a decree entered affirming the decree of the court below. This opinion is found on pages 278 to 293 of the volume of the record marked "Pleadings and Orders."

## I.

Decree of court below should be affirmed.

**Upon the foregoing state of facts we believe the decree of the Court below should be affirmed. This decree granted the Mason City and Fort Dodge Railroad Company the right to use the Union Pacific Bridge, its approaches, depots and tracks connected therewith between the terminus of the Union Pacific road in Council Bluffs, Iowa, and South Omaha, Nebraska, being the same property used by the other railroad companies, for the purpose of connecting the lines of railroad reaching Council Bluffs on the east with the lines of railroad reaching Omaha on the west.**

Authorities.

Opinion of Judge Munger, Volume 3, Record, page 252;

Opinion Circuit Court of Appeals, Volume 3, p. 277;

Union Pacific R'y Co. v. C. R. I. & P. R. R. Co., 163 U. S. 564;

Same case in Circuit Court of Appeals, 51 Fed. 309;

Same case in Circuit Court, 47 Federal, 15;

Union Pacific R. R. Co. v. Hall, 91 U. S. 343;
United States v. Union Pacific R'y Co., 91 U. S. 72;
United States v. Union Pacific R'y Co., 117 U. S. 361;
Opinion of George H. Williams, Attorney General, 14 Opinions of Attorney General, 232, 235.

Claims of Mason City Co. under Acts 1866, 1871, and tripartite agreement.

We claimed the right to use this property on the same terms and conditions as the same is used by all the other railroad companies reaching Council Bluffs on the east, and South Omaha on the west, under the Act of 1866 and 1871, under which the said bridge, approaches, depots and tracks were constructed. We also claimed the same right under a tripartite agreement entered into between the county of Douglas, the city of Omaha, and the First Pacific Company, on January 1st, 1872, by which agreement, in consideration of donations by the city and county of property and bonds amounting to $450,000, the railroad company, its successors and assigns, agreed to arrange for the more perfect connection of any railroads that then were, or might thereafter be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska, and for said purpose the trains of the railroads running into or

out of Omaha and Council Bluffs, should have unobstructed access to and over said bridge and its approaches, with their trains, engines and cars, without discrimination, hindrance, preference or delay.

Union Pacific v. Rock Island and Milwaukee Companies.

The case of the Union Pacific R'y Co. v. the Rock Island and Milwaukee Companies, 163 U. S. 564, disposes of every question involved in this case under the Acts of Congress aforesaid, except the question of whether the obligations of said acts are binding upon the present Pacific Company, which acquired the railroad by a foreclosure of the mortgage of the First Pacific Company. The principal contention of the appellant in the court below was that this decision was erroneous, that the language of the court was *obiter dictum* and was therefore not binding upon the courts below. We presume those arguments will be again repeated, and that this court will be asked to overrule that decision which for nearly ten years has stood unquestioned, and has become a rule of property governing the use of the bridge and tracks of the Union Pacific road. Under that decision the trains of substantially all the railroads except the Mason City & Fort Dodge Co. reaching Council Bluffs and South Omaha, enjoy the use of the bridge, depots and tracks connected therewith, for the purpose of making connection between the east-

ern and western lines. The strenuous insistence of counsel who represented the Union Pacific Company in the courts below, is our only excuse for again presenting to this court the arguments which were so ably presented in the Rock Island case. Before, however, presenting these considerations, we desire to state the history and substance of that decision.

Discussion of the *Rock Island* case.

The case was first decided by Judge Brewer at Circuit, 47 Fed., page 15; next by Judges Caldwell, Sanborn and Shiras in the Court of Appeals—opinion written by Judge Sanborn—51 Fed., page 309; next by the Supreme Court of the United States, 163 U. S., page 566. The case was elaborately argued by most eminent counsel, and received the most careful consideration by the distinguished jurists who passed upon it. The questions involved were as follows:

On May 1, 1890, the Second Pacific Company entered into a contract with the Rock Island Company, and on April 30th of the same year, so far as the property in question was concerned, entered into a like contract with the Milwaukee Company. These contracts were for the use of the identical property covered by the decree of Judge Munger. Before these railway companies commenced the use of the property, there was a change of management of the Pacific Company, and it refused to carry out

the contracts. Suit was brought by the Rock Island and Milwaukee Companies to enforce specific performance. The Union Pacific Company claimed several defenses, but the main claim was that its charter did not authorize it to enter into such a lease, or contract, and that for want of power the same was void. It was admitted in the briefs of counsel that there was no specific grant of authority for the Union Pacific Company to lease its railroad, or any part thereof, and the well established rule was invoked that there must be special authority granted for such purpose. Judge Sanborn proceeded to consider the question upon the ground of implied authority. In discussing the rule of law that no railroad company had a right to transfer its property for a long term of years, and thus disable itself from performing its obligations to the Government and the Public, he said:

Judge Sanborn's opinion.

"Clearly, the contract here in question does not come under the ban of these decisions. So far as the main line of the Pacific Company's road from Council Bluffs to Ogden is concerned, this contract covers but about seven miles of double track on a line of 1,032 miles, part of a system of over 5,000 miles of railroad operated by this company. These tracks are

at one of its terminals, at the junction of thr
great systems of railroad, aggregating mo
than 14,000 miles in extent, at the crossing
the Missouri River where three large citi
stand. Courts cannot be blind to the fact th
every railroad company cannot have entran
to our great cities over tracks of its own, or
the fact that railroad companies do, and eve
public interest requires that they should ma
proper contracts for terminal facilities ov
the roads of each other."

Every railroad cannot have entrance, over tracks of its own.

Passing from this question, Judge Sanborn th
took up the question of the validity of the contra
under the Pacific Railroad Acts. He said:

"There is another ground upon which t
contract must be held to be within the pow
of this corporation."

He then reviewed the charter of the Union P
cific Railroad Company, and the interpretation of t
scheme of Congress, as decided in the case of Ra
road Company v. Hall, 91 U. S., page 345. He quot
at length the Bridge Acts of 1871 and of 1866, a
the Act of June 15, 1866 (14 Stat., 66), creating
railroads post roads, and authorizing them to ca
mails, passengers, troops and government suppl

over bridges, ferries and railroads. Judge Sanborn then said:

The policy of Congress shown.

"An examination of these statutes clearly shows that the purpose and policy of the Congress has been constantly to promote, and often to require, the formation and operation of continuous lines of transportation; that almost without exception it has authorized, and generally has required, the owners of railroad bridges built under its authority to allow the use of their bridges and tracks for the passage of trains of connecting companies. It is seen that the Bridge Act of 1866, by which the Pacific Company, so far as the same was applicable, was 'empowered, governed and limited' for the use and protection of its Omaha bridge, was an act whose restrictions and conditions have been made applicable to at least eight bridges; and that the expressed purpose of the Act of February 24, 1871, was 'for the more perfect connection of any railroads that are or shall be constructed to the Missouri River.'

"*In Union Pacific Railway Co. v. U. S.*, 117 U. S. 355, 361, 6 Sup. Ct. Rep. 772, the Supreme Court, speaking of the Act of 1871, which they there held did not change the rates

of compensation expressly fixed in the Act of 1862 for the transportation of mail, troops and government supplies across the Omaha bridge, said:

" 'The reference in the last-named Act to the Act of 1866 was for the purpose of extending the provisions of the latter Act as far as necessary to confer additional powers upon the railway company for the use and protection of the bridge.'

"In *Pittsburgh, etc., Ry. Co. v. Keokuk & H. Bridge Co.*, 131 U. S. 371, 9 Sup. Ct. Rep. 770, Mr. Justice Gray, speaking for the court, says:

" 'Where the charter of a railroad corporation, or the general laws applicable to it, manifest the intention of the legislature for the purpose of securing a continuous line of transportation, of which its road forms a part, to confer upon it the power of making contracts with other railroads or steamboat corporations to promote that end, such contracts are not *ultra vires*.' *Green Bay & M. R. Co. v. Union Steamboat Co.*, 107 U. S. 98, 2 Sup. Ct. Rep., 221.

"The great purpose of the contract here in question was to fill the gap in the line of the Rock Island Company between Council Bluffs and Beatrice, and thus establish a continuous line of railroad from Chicago, by the way of Omaha and Beatrice, to Denver, Colorado. It is true that that line would be a competitor of the Pacific Company, but the course of legislation and decision, the public policy of this nation, is to foster, not repress, competition; it is to promote, not to repress, continuous lines of transportation; and, reading the charter of this company in the light of the general legislation to which we have referred, we are constrained to hold that the Union Pacific Railway Company was thereby fairly empowered to make this contract."

The court necessarily passed upon the question involved in this case. It determined that the provisions of the Act of 1866 requiring the use of the bridges authorized by that act to be extended to all railroad companies, were adopted as a part of the Union Pacific Bridge Act of 1871. The only express authority in the charter of the Union Pacific Railroad Company authorizing it to make a contract with the Rock Island and the Milwaukee Companies to run

their trains over the bridge and tracks, was the provisions of the Act of 1866. The provisions of the Act of 1866 made it obligatory upon the Union Pacific Company to allow the Rock Island and Milwaukee Companies to run their trains over the bridge and tracks; it followed therefore, because the company was required to do this, it necessarily had the authority to contract to do it. It had no express authority without holding that the obligation was imposed. If, therefore, the Act of 1866 became a part of the Act of 1871, governing the use of the bridge, it controls this case.

Judge Sanborn reviewed a large number of the statutes of Congress requiring railroad companies to allow the trains of other roads to cross their bridges for reasonable compensation, for the purpose of showing that this was the policy of Congress, and that that policy had been carried forward and applied to the Union Pacific Company by the Act of 1871.

The case was appealed to the Supreme Court of the United States. It was there argued on behalf of the Union Pacific Company by Judge Dillon and Mr. Thurston, on behalf of the Rock Island Company by Mr. Woolworth, and on behalf of the Milwaukee Company by Mr. Peck.

In the Circuit Court of Appeals it was argued by
ne of the same and other equally eminent counsel.
e have had access to the record and the briefs in
ose cases, and invite the court's attention to them.
e questions which were argued by counsel of the
nion Pacific Company in the court below as to the
plicability of the Act of 1866 to the bridge and
acks in question, and as to whether said Acts in-
uded the railroad tracks from Council Bluffs to
outh Omaha were argued *pro* and *con* by the coun-
l in these courts.—See Judge Dillon's Brief, Cir-
it Court App., pp. 43 to 56; In the Supreme Court
the U. S., pp. 40 to 58; also Mr. Woolworth's
rief, Circuit Court App., pp. 27, 28 and 118 to 124;
the Supreme Court of the U. S., pp. 55 to 69.

Calling attention to the brief of Judge Dillon, in
e Supreme Court U. S. p. 51, it will be noted that
e there urges that the Union Pacific Company had
o specific authority unless it is found in the Acts
1871 and 1866. As to the Act of 1866, referred
in the Act of 1871, he said:

> "Even if it did authorize a lease of the bridge, neither it nor any other Act authorizes the Union Pacific to lease the remaining six or seven miles of the ten miles of its railroad which the contract purports to lease,

and therefore on that ground the contract is void."

It was also urged by him that under the decision of the Supreme Court of the United States it was the duty of the Union Pacific Company to operate its road to the eastern terminus at Council Bluffs, citing *Union Pacific Co. v. Hall*, 91 U. S. 345, and *Union Pacific Co. v. United States*, 117 U. S. 355.

Referring to the Act of 1871, it was further urged that the provisions in the Act of 1871 which, in substance, provide that for the use and protection of the bridge and property the Union Pacific Company should be governed by the Act of 1866, referred only to those provisions of Sections 2 and 3 regulating the manner of construction, creating the bridges post routes, and providing for the rates for transportation of mails, etc., over the bridge.

Points urged by counsel for U. P. Co. were covered in Rock Island case in this court.

Every point urged by the counsel for the Union Pacific Company in the Circuit Court of Appeals, in the case at bar, was originally made in the briefs of counsel in the Rock Island case in the Supreme Court of the United States and with great ability and completeness, so that there were no reasons presented to the Court of Appeals against the affirmance of the decree in this case, based upon the obligations imposed by the act of Congress, which were

not equally potent against the decree in the Rock Island case in this court.

The testimony was substantially the same in the two cases. The Saunders deed and the tripartite agreement were in evidence in the Rock Island case, —Record in that case, p. 139,—and it was called to the attention of the court in the briefs.

The opinion was written by Chief Justice Fuller. In opening the discussion he said:

> "And we may remark in the outset that the main contention of the Pacific Company concerns the tracks between Council Bluffs and South Omaha, including the bridge."

The court following the line of argument of Judge Sanborn in the court below, first considered the nature of the agreement, and whether it was valid under the implied powers of the Union Pacific Company. The court held that it was not a lease; that the Union Pacific Company did not give up the possession of this property; that it parted with no franchise; that what it agreed to do was to let the Rock Island into such use of the bridge and tracks as it did not need for its own purposes; that it did not thereby prevent it from fulfilling its obligations and performing its duties to the public, but simply widened the extent of the use of the property for the

same purpose for which it was acquired in the pursuance of a wise public policy. Among other things, the court said:

"The evidence shows that between the bridge and South Omaha some of the most thickly populated and densely settled portions of the city of Omaha are situated; that five railroads engaged in transcontinental traffic do their terminal business there, taking up and setting down passengers, collecting, unloading and delivering freight; that a large part of the territory is filled with the tracks of the Union Pacific and Burlington companies, and that there is scant room, if any, for another company with the many tracks required for terminal business; that the whole territory is very valuable, densely populated and filled with tracks, and that at South Omaha are stock yards and packing industries of great extent, furnishing the companies a vast volume of freight and compelling the building of many tracks. If it were true that railroad companies could not, ordinarily, without the aid of a statute, grant running facilities over their tracks even when such an arrangement would not interfere with their

Densely settled.

Scant room for another company's tracks.

business, the application of so rigorous a rule to defeat a contract as between the parties, in respect of tracks in the congested parts of large cities, where the entire use of them is not required by their owners, does not seem reasonable. It is well said by Sanborn, J., speaking for the Circuit Court of Appeals: 'Courts cannot be blind to the fact that every railroad company cannot have entrance to our great cities over tracks of its own, or to the fact that railroad companies do, and every public interest requires that they should, make proper contracts for terminal facilities over the roads of each other.' * * *

Thinks South Omaha was included.

"But the determination of the existence of the power to grant running rights in this instance does not rest on these considerations alone. For the provisions of the Pacific Railroad acts relating to the bridge over the Missouri River, its construction and operation, imposed on the Pacific Company the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and the tracks between Council Bluffs and Omaha, and we think that South Omaha was included.

"The original charter of 1862 required the

construction of the Pacific road from the east bank of the river, and so impliedly authorized the company to bridge it, and the amendatory act of 1864 expressly gave the corporation authority 'to construct bridges over said Missouri River,' the bridge contemplated was for the company's use as a part of its road, and no provision was made for other roads or other business, nor were any special means provided for the construction of the bridge.

"In 1871 several roads had been built from the East to Council Bluffs, and others were building and roads were in process of construction in Nebraska with Omaha as their terminus.

"The Omaha Bridge act of February 24, 1871, c. 67, 16 Stat. 430, was then passed, by which, 'for the more perfect connection of any railroads that are or shall be constructed to the Missouri River, at or near Council Bluffs, Iowa, and Omaha, Nebraska,' the company was authorized to issue bonds not exceeding two and one half million dollars, and to 'secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge

over said river, and the tracks and depots required to perfect the same, as now authorized by law of Congress.' The bridge was 'to be so constructed as to provide for ordinary vehicles and travel;' and the company was authorized 'to levy and collect tolls for the use of the same.' The act further provided 'for the use and protection of said bridge and property, the Union Pacific Railway Company shall be empowered, governed and limited by the provisions of the act entitled "An act to authorize the construction of certain bridges and to establish them as post roads," approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto.' The act of 1866 thus referred to, 14 Stat. 244, c. 246, is entitled 'An act to authorize the construction of certain bridges and to establish them as post roads.' It authorized the construction of nine different bridges, eight across the Mississippi River and one across the Missouri River. The first bridge provided for was to be constructed at Quincy, Illinois, and by the first section it was made lawful for any person or persons, company or corporation, having authority from the States

of Illinois and Missouri for that purpose, 'to build a bridge across the Mississippi River at Quincy, Illinois, and to lay on and over said bridge railway tracks, for the more perfect connection with any railroads that are, or shall be constructed to the said river at or opposite said point, and that when constructed the trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge under the limitations and conditions hereinafter provided.'

The common object of these acts discussed.

"The common object of both these acts plainly was the more perfect connection of roads running to the bridges on either side of the river. And this is in harmony with numerous Acts of Congress referred to in the opinion of the Circuit Court of Appeals; Act of February 21, 1868, 15 Stat. 37; Act of May 6, 1870, c. 93, 16 Stat. 121; Act of June 30, 1870, c. 176, 16 Stat. 173; Act of July 1, 1870, c. 195, 16 Stat. 185; Act of March 3, 1871, c. 110, 16 Stat. 473; Joint Resolution of March 3, 1871, No. 48, 16 Stat. 599, and many others, all of them indicating a settled policy that all

structures of this character should allow connecting roads to cross them with their cars, trains and engines. It is said that the reference to the Act of 1866 should be confined to its second and third sections; but as the matters provided for in those sections were fully otherwise covered in the Pacific Railroad Acts, that does not commend itself to us as a reasonable construction. But it is argued that even if the Pacific Company were authorized to grant to the Rock Island Company the right to run its trains with its engines over the bridge, it was not empowered to grant the same rights over the tracks. The evidence shows that the tracks east of the bridge were upon the approach to the structure proper, and it appears from the maps that the depot at the west end of the bridge was more than half a mile distant. The Act of 1871 provided that for the more perfect connection of the roads east of the river with those west of it the company might issue bonds and secure the same by mortgage 'on the bridge and approaches and appurtenances,' and it would seem to be clear that the approaches on the west side, as well as on the east, must be re-

garded as part of the structure. Moreover, the act refers to 'the tracks and depots required to perfect the same.' A railroad bridge can be of no use to the public unless united with necessary appurtenances, such as approaches, tracks, depots and other facilities for the public accommodation. And we consider Council Bluffs, Omaha and South Omaha, under the facts, as necessarily embraced in the intention of Congress. It is true that it appears that from the depot to the point in South Omaha where the tracks of the companies connected, is about four miles; but the scheme of Congress was to accomplish the more perfect connection 'at or near Council Bluffs, Iowa, and Omaha, Nebraska,' and we think this distance reasonably within the terms of the Act of 1871, liberally construed, as the act should be.

"The legislation of 1862 and 1864 in respect of the Union Pacific Railway Company was under consideration in *Union Pacific Railway Co. v. Hall*, 91 U. S. 343, 345, and it was said by Mr. Justice Strong: 'The scheme of the act of Congress, then, is very apparent. It was to secure the connection of the main

line, by at least three branches, with the Missouri and Iowa railroads, and with a railroad running eastwardly from Sioux City in Iowa, either through that state or through Minnesota. An observance of this scheme, we think, will aid in considering the inquiry at what place the Act of Congress, and the orders of the President made in pursuance thereof, established the eastern terminus of the Iowa branch. From it may reasonably be inferred that the purpose of Congress was to provide for connections of the branches of the main line of the Union Pacific road with railroads running through the States on the east of the Territory, and to provide for those connections within those States at points at or near their western boundaries.'

"On June 15, 1866, an act was approved, c. 124, 14 Stat. 66, 'to facilitate commercial, postal and military communication among the several States,' carried forward as section 5258 of the Revised Statutes, which provided that 'every railroad company in the United States, whose road is operated by steam, its successors and assigns, be, and is hereby, authorized to carry upon and over its road, boats,

bridges and ferries, all passengers, troops, government supplies, mails, freights and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination.'

"It is impossible for us to ignore the great policy in favor of continuous lines thus declared by Congress, and that it is in effectuation of that policy that such business arrangements as will make such connections effective are made."

The court closed the opinion with a quotation from the opinion of Mr. Justice Brewer in the court below, in which he said:

"It is to the higher interest of all, corporations and public alike, that it be understood that there is a binding force in all contract obligations; that no change of interest or change of management can disturb their sanctity or break their force; but that the law which gives to corporations their rights, their capacities for large accumulations, and all their faculties, is potent to hold them to all

their obligations, and so make right and justice the measure of all corporate as well as individual action."

It is impossible to add to the statement of the law as contained in the opinions of these two eminent judges.

Opinion not *obiter dictum*.

**It is now contended that so much of the opinion o the Chief Justice as holds that the Act of 186 was adopted by and became a part of the Unio Pacific Bridge Act of 1871, and thus impose upon that company and its successors the obli gation to allow all railroads, terminating a Council Bluffs and South Omaha, the use of th bridge, tracks, and approaches, was *obite dictum*, was in error, and should be overruled**

We will first consider whether any part of this opinion was *obiter dictum*, and, second, were it now an original question, does the opinion correctly state the principles of law involved?

Question involved in the Rock Island case.

The question involved in the *Rock Island* case was the validity of the contract with the Rock Island and the Milwaukee Companies, granting them the joint and equal right to the use of the bridge, its approaches, the depot and tracks between Council Bluffs and South Omaha. Its validity was assailed by the Union Pacific Company on two grounds: First, for want of implied authority in the railway company to make such a contract; and second, for the want of express authority. Both questions were elaborately argued at the bar, and considered by the

court, and the contract was sustained upon both grounds.

As to express authority.

The only express authority in the charter of the Union Pacific Company was the obligation imposed by the Acts of 1866 and 1871, and because these acts imposed upon the Union Pacific Company the duty of allowing the Rock Island and Milwaukee Companies to run their trains over the bridge and tracks and to use the Union station, therefore it could contract to do so.

Whenever, therefore, any court held that the Union Pacific Company had express authority under these Acts of 1866 and 1871, to grant to any other railway company the right to run its trains over the tracks from Council Bluffs to South Omaha, and to use the bridge and depot, the court necessarily held that the duty was imposed upon the company to do the same thing without a contract. If it had the express power to make a contract as to the tracks between 20th St. and South Omaha, it was because the duty was imposed. It was not contended in the court below that the opinion of the Circuit Court of Appeals written by Judge Sanborn in the *Rock Island* case was *obiter*, and yet of necessity, the question was determined by that court as well as by this court. In the opinion written by Judge Sanborn, he

Was not contended that opinion of Circuit Court of Appeals was *obiter*, yet the question was determined.

held that the obligations of the Act of 1866, to all other companies to use the bridges therein provided for, became a part of the Union Pacific Bridge Act 1871, and imposed like obligations upon the Union Pacific Co. as to the tracks between Council Bluffs and South Omaha, for the purpose of making connections between the various lines of road reaching those points on each side of the river.

By deciding that the Act of 1866 was a part of the Union Pacific charter, the court necessarily decided that the obligations of that Act were imposed upon the Union Pacific Company. That was the principal question argued in the court below and decided by this court in the opinion of the Chief Justice.

In considering the opinion of this court in the *Rock Island* case, Judge Munger states that the opinion goes one step farther than the opinion of the Circuit Court of Appeals, in that the court held that not only was the contract authorized by the Bridge Act of 1871, but the obligation to allow the use of the property was imposed without a contract, and that the latter holding was not necessary to the decision of the case, and was *obiter*. We think this distinction is not warranted. To be sure, the court of appeals did not, in the opinion in that case, in e

press language say that the act made it mandatory upon the Union Pacific to allow such use of its bridge and tracks, but it was the necessary consequence of what was said, and this court did not, in legal effect, go beyond the decision of the court of appeals, nor decide anything that was not the logical consequence of the decision of the court below.

However, Judge Munger, in construing the opinion of this court in the *Rock Island* case, held that it authoritatively decided that the first section of the Act of 1866 was made applicable to the Union Pacific bridge and tracks by the Act of 1871, and hence was to be read into it as a part of that act, and therefore it imposed upon the Union Pacific Company the obligation to allow any railroad company the joint and equal use of the bridge, depot and tracks between Council Bluffs and South Omaha. In explanation of Judge Munger's opinion it is proper to state that, not knowing the arguments which would be advanced by the Union Pacific Company, we did not cite to him the authorities which were presented to the court of appeals, showing that no part of the decision of this court was *obiter dictum*. In the court of appeals it was again urged by counsel for the Union Pacific Company that the decision written by Chief Justice Fuller was mere *obiter*, erroneous and not binding

upon that court. The opinion was written by Ju
Sanborn, and he stated the conclusions with a cl
ness and precision we cannot hope to excel. Rec
Volume 3, pp. 283, et seq.

While he placed the decision on the ground
this court had disposed of the question in the
*Island* case, and that the decision was not *obiter*,
the reasoning by which he adduced the conclu
that there was express authority for the Rock Is
contract, would fully sustain the appellees' posi
were there no binding decision of this court.
ask the indulgence of the court to consider br
the opinion of the court of appeals. Judge San
said—Record, Vol. 3, page 283:

Opinion by Judge Sanborn in the Court of Appeals.

> * "*It is true that the power to grant the*
> *use of its transportation facilities at Co*
> *Bluffs, Omaha and South Omaha*
> *exist in the Pacific Company without*
> *duty to grant them. But it is also true*
> *the duty could not exist without the*
> *er.* If the duty existed it was imposed by
> Congress which had the authority to grant
> power and the imposition of the duty ne
> sarily carried with it the power to disch
> that duty. The opinion of the Supreme C
> upon the second reason assigned by cou

*The italics are ours.

for the Rock Island Company for the existence in the Pacific Company of the power to make the contract between the companies when analyzed and stated in syllogistic form reads in this way: The Congress of the United States by its act relating to the bridge over the Missouri river imposed upon the Pacific Company the duty of permitting the Rock Island Company to use the bridge and the other transportation facilities of the Pacific Company between Council Bluffs, Omaha and South Omaha. The imposition of this duty necessarily carried with it the grant of the power to discharge it. Therefore, the Pacific Company had the power to make the contract which granted this permission. Now, how can the position be successfully maintained that the decision of the question involved in the major premise of this syllogism was beyond the case under the consideration of the court, or unnecessary to its decision, when a determination that no such duty was imposed would have been fatal to the argument and would necessarily have resulted in the conclusion that no power to make the contract was granted by the act of Congress relating

to the Omaha bridge? No satisfactory a
swer to this question has been made and t
conclusion is inevitable that the considerati
and decision of the question whether or not
was the duty of the Pacific Company under t
act of Congress relative to the Omaha brid
to permit the Rock Island Company to use t
transportation facilities in question was ne
essary to, and determinative of the decisi
that the Pacific Company had the power u
der those acts to grant to the Rock Isla
Company the permission to use them."

This seems to us a demonstration. If the po
tion here stated is correct, the conclusion is inevit
ble that it is the duty of the Union Pacific Compa
to allow the Mason City & Fort Dodge Railroad Co
pany the use of these facilities; and while it was pe
fectly proper and correct to base the decision up
the binding effect of the opinion of this court, t
decisions of the court of appeals seem to us equal
conclusive. But it is urged that because the cou
first decided that the Union Pacific Company h
implied authority, it was unnecessary to decide th
it had express authority, and therefore, that part
the opinion is *obiter*. We have as much right to s
that that part of the opinion which held that the co

pany had implied authority, is *obiter*, as counsel has to say that that part of the opinion which held that the company had express authority, is *obiter*. Neither is correct. (60 Wisconsin, 270.)

The power to contract was expressly involved. It might be sustained upon either of two grounds or both. It was sustained upon both. Each question was involved; each debated, discussed and deliberately decided by the court.

*Rock Island not obiter.*

It is well settled that where an adjudication is placed upon two or more grounds, the decision of each will be held to be of binding force, and not *obiter*.

Authorities.

R'y Co. v. Schutte, 103 U. S. 118;
Alexander v. Worthington, 5 Md. 489;
Jones v. Habersham, 107 U. S. 179;
Bouchner v. C. M. & N. W. Ry., 60 Wis. 264, 270, 273;
Bouvier's Dictionary, Rawles Revision, pp. 567, 569;
Becker v. Chester, 91 N. W. 100;
Haws v. Contra Costa Water Co., 5 Sawyer, 287;
Brown v. C. & N. W. Ry., 102 Wis. 137-154.

The case of *Railway Companies v. Schutte*, 103 U. S., 118, was a suit brought by the State of Florida

against the Florida Central Railroad Company, alleging default in the payment of interest due on the company's bonds, and seeking to enforce the statutory lien by the sale of the road. The company answered, setting up fraud, the unconstitutionality of the law touching the State Bonds, and urging that the railroad bonds were not a lien. The Supreme Court of the State dismissed the bill because it was not proved that any of the State bonds were in the hands of *bona fide* holders. The authority of the State, however, to exchange the bonds and create a lien was fully argued and considered by the court. Subsequently, and in a suit (not between the same parties) the question came up as to whether the expressions in the opinion of the court as to the statutory lien were *obiter*. The court said:

Railway Cos. v. Schutte, 103 U. S. 118.

> "As to the Florida Central Company, however, the case is different, and it is claimed not only that the statute did not authorize the exchange of the bonds and the creation of the lien, but also that the company did not in its corporate character execute its own bonds or make the exchange.
>
> "As to the first question, we deem it sufficient to say that the Supreme Court of Florida has distinctly decided that in the case of

this company, as well as the other, the statutory authority was complete. The point was directly made by the pleadings and as directly passed on by the court. Although the bill in the case was finally dismissed because it was not proved that any of the State bonds had been sold, the decision was in no just sense *dictum*. It cannot be said that a case is not authority on one point because, although that point was properly presented and decided in the regular course of the consideration of the cause, something else was found in the end which disposed of the whole matter. Here the precise question was properly presented, fully argued, and elaborately considered in the opinion. The decision on this question was as much a part of the judgment of the court as was that on any other of the several matters on which the case as a whole depended."

We especially invite the court's attention to the case of *Buchner v. Milwaukee Company*, 60 Wis., 264, on this subject. In that case a railway company had constructed its lines in front of a lot so as to cut down the natural level of the street. Suit was brought in equity to compel the railway company to condemn that portion of the land constituting one-

half of the highway next to the lot of Buchner, and to ascertain and recover the damages sustained, and for an injunction until the damages were ascertained and paid. The court held that the complainant was entitled to incidental damages caused by reason of the cutting down of that part of the street in front of his lot, but held that he could not maintain the bill in equity, and hence dismissed it, with costs. Subsequently, the railway company undertook to condemn the property, and it was claimed that what the court said about the damages to his lot in the other action was mere *obiter*, because the court had dismissed the bill in equity on the ground that such a bill could not be maintained. The court held to the contrary, and said:

Bouchner v. Milwaukee Co., 60 Wis. 264.

> "The complaint now is, in effect, that it was mere *obiter* to determine the first proposition, by reason of the conclusion reached upon the second proposition. Upon the same theory it would have been mere *obiter* to say anything upon the second proposition, had we determined the first proposition the other way. To confine this court to the consideration of a single proposition, where several are involved and fully discussed by counsel, might at times operate to prolong litigation, increase the

number of appeals, and inflict unnecessary burdens upon both parties and the public, and yet at times it may be highly proper."

Following this decision we call the Court's attention to a very able opinion by Judge Marshall of the Supreme Court of Wisconsin in a later case, Brown v. Chicago Northwestern Railway (supra), 102 Wis., 154-155, in which Judge Marshall stated that a judgment is authority upon all points assumed to be within the issues which the record shows the court deliberately considered and decided in reaching it.

Brown v. C. & N. W. Ry., 102 Wis. 154, 155.

"Nothing is *obiter* strictly so called, except matters not within the questions presented,—mere statements or observations by the judge in writing the opinion, the result of turning aside for the time to some collateral matter by way of illustration."

The Judge quoted with approval the language of an eminent text-writer as follows:

"It is difficult to see why in a philosophical point of view the opinion of the court is not as persuasive on all the points which were so involved in the cause that it was the duty of counsel to argue them and which were deliberately decided by the court as if the decision

had hung upon but one point," and adds: 'su
*dictum*, if *dictum* it is, should be regarded
*judicial dictum* in contradistinction to m
*obiter dictum*'."

In the case of Alexander v. Worthington, 5 M
489, the court said:

Alexander v. Worthington, 5 Md. 489.

"But we are not aware of the author
which will sustain the position assumed by
Supreme Court, that the unanimous opinion
a State court of the highest appellate juris
tion, directly on a point which is supposed
the court to be presented by the record, a
which is elaborately discussed by the coun
and is investigated with care and solem
delivered by the court, can be disregarded
*obiter dictum*, merely because it is since
covered that some other point existed
which the judgment rendered might have b
rested. If any such authority exists, it
not been referred to."

That is the exact question at bar. The quest
of the express power of the Union Pacific to ma
the contract was necessarily involved. It was
mitted by the learned counsel on both sides of th
case that there was no express authority for the
contracts, unless it was found in the Acts of 1871 a

1866. Express authority is necessary for a railroad company to lease its railroad or any part thereof. To be sure, the decision that it had implied authority to lease its terminals was sufficient to sustain the ultimate determination of the court, but, it is equally true that the decision that it had express authority was sufficient to sustain its ultimate determination, and the decision of implied authority was equally unnecessary. But, however that may be, each of these questions was elaborately argued at the bar of this court, was considered of sufficient importance to be discussed and decided; the decision was the expression of an opinion of an eminent court, upon a question argued and submitted, expressing views consonant with reason and justice, and should be followed, whether binding or not. (5 Md. 489.) It was in the interest of the public to have the questions settled.

*Rock Island* decision became a rule of property on which people had a right to rely.

The people who invested their money in the Mason City & Fort Dodge Railroad had a right to rely on this decision of the highest tribunal of the land. The rule was first declared by Judges Caldwell, Sanborn and Shiras in the Circuit Court of Appeals. After an elaborate argument it was deliberately announced as the judgment of this court. Nearly ten years have elapsed, and this decision has

become a rule of property which has been followed by the Union Pacific Railroad Co., and the other lines of road in the use of this bridge and terminals. Not only that, but in the Mason City case, after careful consideration, the decision of this court has been pronounced by the court of appeals as a binding decision conclusive upon the issues of this case. If it is so understood by learned judges and lawyers, certainly the men who constructed the Mason City road and invested their money upon the faith of this decision have a right to rely upon it.

Construction of Mason City road commenced in 1901 and completed in 1903.

The construction of that road was commenced in the spring of 1901 and completed in the summer of 1903. The plans of these constructors contemplated the use of this bridge and terminals under a proposition made by the president of the Union Pacific Co., knowing that the right to use them had been decreed by this court. To now overrule that decision means ruin and bankruptcy to this complainant, and the reversal of a policy that has been of inestimable benefit to the people of Omaha and other places served by this company. Nor can the rule of *ignorantia juris non excusat* apply, for the decision of this court is the law.

**The decision in the Rock Island case, construing the Union Pacific Bridge Act, became a rule of property governing the use of the bridge and tracks involved in this case, on which all parties have a right to rely, and it should not now be disturbed.**

Decision in *Rock Island* case a rule of property.

Authorities.

Harris v. Jex, 55 N. Y. 421.

Levy v. Nitsche, 40 La. Ann. 500.

Minnesota Co. v. National Co., 3 Wal. 334.

Frank v. Evansville & I. R. Co., 111 Ind. 132.

Hines v. Driver, 89 Ind. 342.

Paulson v. City of Portland, 16 Oregon, 450.

Garth v. Arnold, 115 Fed. C. C. A. 471.

Harris v. Jex, 55 N. Y. 421.

In the case of *Harris v. Jex*, supra, the defendant, Jex, was the owner of land on which a mortgage was in existence made prior to the passage of the legal tender act of Congress of 1862. When the mortgage became due, Jex tendered legal tender notes of the United States in payment thereof, which were refused. At that time, the decision of the Supreme Court of the United States, in *Hepburn v. Griswold*, had been made, which held that the act was unconstitutional as to debts existing at the time the act was passed, and that these debts or contracts must be paid in coin; that Congress could not compel a creditor to accept legal tender notes in payment

thereof. After the tender was made and refused, th
Supreme Court of the United States reversed thi
decision in the case of *Knox v. Lee* (12 Wal. 457
The Supreme Court of New York held that the pa
ties had a right to rely on the decision of the highes
court of the land as it stood at the time the tend
was made. The court said:

"The claim is sought to be justified by th
maxim, *ignorantia juris non excusat*, the rea
son of which is stated by Lord Ellenborough
in *Bilbie v. Lumley* (2 East, 469), to be, tha
otherwise there is no saying to what exten
the ignorance might not be carried, and tha
it would be urged in almost every case. Th
reason of the rule has no application to a cas
like this. The plaintiff had a right to repos
upon the decision of the highest judicial tribu
nal in the land. It was, as applied to the rela
tions between these parties and to this case
the law, and not the mere evidence of the law
Respect for the decisions of courts is a duty
inculcated by writers upon the law, and en
forced by considerations of public policy. I
is said by *Kent* (1 Com., 476): 'If a decisio
has been made upon solemn argument and
mature deliberation, the presumption is i

Had a right to repose upon decision of highest tribunal in the land.

favor of its correctness, and the community have a right to regard it as a just declaration or exposition of the law, and to regulate their actions and contracts by it.' The transactions of life would be involved in great and distressing perplexity and uncertainty, if the maxim quoted is to be applied and extended to cases like this."

Levy v. Nitsche, 40 La. Ann. 500.

In the case of *Levy v. Nitsche*, supra, the court held that, after the intent and meaning of a law has been settled by judicial construction, such construction becomes a rule of property, so far as relates to contract rights acquired under it, which will not be changed except for the most cogent reasons. The court said:

"Indeed, the jurisprudence of that time constituted a rule of property in which titles to real estate were adjusted, and to disturb it, now that the court on whose order the property was partitioned has ceased to be, would be straining a legal technicality too far, and to no useful purpose. In a recent case, this court said: 'A familiar rule is that judicial construction of statutes becomes incorporated in it.' * * * 'Whatever might be our impression, were the matters *res integra*, we

Judicial construction of statutes becomes incorporated in it.

deem it important, in the construction of statutes, to adhere to whatever has already been adjudged. The judicial interpretation becomes, as it were, a part of the statute, and should not be changed but for the most cogent reasons.'"

Minnesota Co. v. Nat'l Co., 3 Wallace, 334.

The rule is clearly stated by Mr. Justice Grier in the case of Minnesota Company v. National Company, supra.

"Where questions arise which affect titles to land, it is of great importance to the public that, when they are once decided, they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. Legislatures may alter or change their laws, without injury, as they affect the future only; but, where courts vacillate and overrule their own decisions on the construction of statutes affecting the title to real property, their decisions are retrospective and may affect titles purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change. Parties should not be encouraged to speculate on

a change of the law when the administrators of it is changed. Courts ought not to be compelled to bear the infliction of repeated arguments by obstinate litigants, challenging the justice of their well-considered and solemn judgments."

In the case of *Frank v. Evansville & I. R. Co.* supra, the court held that the decisions of the Supreme Court of Indiana, to the effect that by condemnation proceedings the estate taken is a fee instead of an easement, became a rule of property, and should be followed in all cases. The court said:

Frank v. E. & I. R. Co., 111 Ind 132.

"Nearly fifteen years have now elapsed since this court decided, in *Waterworks Co. v. Burkhart* (41 Ind. 364), where lands had been taken and used under the laws which provided for the construction of the Wabash & Erie canal, that the estate so taken in such lands was an estate in fee-simple, and not a mere easement therein. Upon the faith of that decision, we may well suppose that, during those years, large investments have been made in the lands so taken and used for the construction of the Wabash & Erie canal, and to that extent the decision in that case must be regarded as a 'rule of property'."

Paulson v. City of Portland, 16 Oregon, 450.

To the same effect was the case of *Paulso* *City of Portland*, supra. The court held that its vious decisions, construing the charter of the Cit Portland to the effect that a certain notice was necessary in cases of assessments of benefits on p erty incurred in the construction of sewers, w rule of property, although the learned judges considering the subject, believed the rule thus down to be erroneous. The court said:

> "The decision in *Strobridge v. Cit* *Portland* (8 Or. 67) was made nearly years ago. It declared valid the identical vision of the charter of the city which is fore us, and under which all the sewers wi the city have been constructed. Upon faith of that decision, doubtless, the proc ings complained of were instituted, and an penditure of $35,000 incurred in the const tion of the said sewer; and, to overrul under the circumstances, and pronounce an act of the legislature under which the for more than a quarter of a century, has b carrying on extensive operations, would ate confusion and occasion injustice. If rule of *stare decisis* is applicable under circumstances, I think it should certainly

applied in this case. It cannot, it seems to me, be consistently asked of us that we pronounce so important a provision of a city charter void, which this court by a solemn adjudication in a former case has held to be valid, whatever our holding might be if the question were *res integra*."

There is an exceedingly able discussion of this subject in the case of *Wilkins v. Chicago, St. L. & N. O. R. Co.*, in the Supreme Court of Tennessee (75 S. W. 1027). The court quoted with approval the language of Chancellor Kent, as follows:

Wilkins v. C., St. L. & N. O. Ry. Co., 75 S. W. (Tenn.) 1027

"If a decision has been made upon solemn argument and mature deliberation, the presumption is in favor of its correctness, and the community have a right to regard it as a just declaration or exposition of the law, and to regulate their actions and contracts by it. It is by the notoriety and stability of such rules that professional men can give safe advice to those who consult them, and the people in general can venture to buy and trust and to deal with each other. If judicial decisions were to be lightly disregarded, we should disturb and unsettle the great landmarks of prosperity."

Income Tax Acts, 158 U. S. 689.

The language of Mr. Justice Brown, in the dissenting opinion in the income tax acts (158 U. S. 689), is exceedingly apposite to the subject under consideration:

> "I have always entertained the view that, in cases turning upon questions of jurisdiction, or involving only the rights of private parties, courts should feel at liberty to settle principles of law according to the opinions of their existing members, neither regardless of, nor implicitly bound by, prior decisions, subject only to the condition that they do not require the disturbance of settled rules of property. There are a vast number of questions, however, which it is more important should be settled in some way than that they should be settled right, and once settled by the solemn adjudication of the court of last resort, the legislature and the people have a right to rely upon such settlement as forever fixing their rights in that connection. Even 'a century of error' may be less pregnant with evil to the State than a long deferred discovery of the truth. I cannot reconcile myself to the idea that adjudications thus solemnly made, usually by a unanimous court, should now be

set aside by reason of a doubt as to the correctness of those adjudications, or because we may suspect that possibly the cases would have been otherwise decided if the court had had before it the wealth of learning which has been brought to bear upon the consideration of this case."

These decisions are particularly applicable to the case at bar. The *Rock Island* case was decided nearly ten years ago. The decision established a rule of property for the government of the use of the Union Pacific bridge and tracks between Council Bluffs and South Omaha. In a matter of great public interest, the court determined that the act of 1866 was a part of the charter of the Union Pacific Company, governing the use of this property, authorizing the Union Pacific Company to contract with other companies to run their trains over the tracks, and to use the bridge and terminals, and imposing a like obligation as to its use for the benefit of all other railroad companies reaching Council Bluffs or South Omaha. Since that time, every railroad company, except the Mason City company, whose lines of road reach South Omaha or Council Bluffs, has made a contract with the Union Pacific company for the use of all, or part, of this property. Suppose, for illus-

tration, this court had not held that there was implied authority for the Rock Island contract, but placed its decision solely upon the ground that there was express authority in the Union Pacific bridge act; would this decision not have had the effect of a rule of property, which the court would feel bound to follow, even though on a subsequent consideration the court should believe its former judgment unwarranted? To reverse the decision would be to destroy the rights of parties, acquired upon the faith of it. Is it less a rule of property because the decision was placed on two grounds? The Mason City company had equal right to rely upon this decision.

So zealous has this court been to maintain the stability of the law that it has refused to follow the highest courts of the States in the construction of their statutes, where, after the issue of negotiable securities, the rules of law pertaining to their validity have been changed by the decisions of the Supreme Court.

Mitchell v. Burlington, 4 Wal. 270.
Gelpcke v. Dubuque, 1 Wal. 202.
Havemeyer v. Iowa, 3 Wal. 294.

Not claimed that *Rock Island* case is not broad enough.

It was not claimed in the court below, and I do not think it will be claimed here, that the decision in the *Rock Island* case is not broad enough to justify

the claim made by the Mason City company, but the claim is that the decision is not binding because it is *obiter dictum*, and, as such *dictum*, it is an erroneous statement of the law. Granting, for the purpose of this argument, that to be the case, it is a statement of the law by the highest court in the land, and the stability of property rights demands that it be adhered to (5 Md. 489).

**But considering this as an original proposition, and admitting for the purpose of this argument that the question is not *stare decisis*, the conclusions reached by the Court in the Rock Island case were correct.**

The *Rock Island* case is correct on principle.

A brief consideration of the Union Pacific Railroad Acts will clearly show that the intention of Congress by the Bridge Act of 1871 was to provide for a connection of all railroads that then were or might thereafter be constructed to the Missouri River at or near Council Bluffs, Iowa, from the East, with all roads that then were or might thereafter be constructed to the Missouri River at or near Omaha, Nebraska, from the West; and by means of the bridge, depots and intervening tracks connected therewith, to form continuous lines of transportation between two States to the Eastward and Westward thereof.

The original Act of 1862 provided for the construction of one main line and three branches—the main line to commence on the one-hundredth meridian, between the south margin of the valley of the Republican River, and the north margin of the valley of the Platte River, in Nebraska, and to extend westward to a connection with the Central Pacific. The three branches were as follows:

The ninth section authorized the Leavenworth, Pawnee & Western Railroad Company of Kansas to construct a railroad from the Missouri River at the mouth of the Kansas River to the aforesaid point of commencement of the Union Pacific Railroad. This road was changed to the Kansas Pacific, and consolidated with the Union Pacific. It was required to connect with the Pacific Railroad of Missouri, and form a through line to St. Louis.

By the fourteenth section the Union Pacific Company was authorized to construct a line from a point to be fixed by the President on the western boundary of Iowa upon the most direct and practicable route to a connection with the main line at the one-hundredth meridian of longitude.

That whenever a railroad should be built through Minnesota or Iowa to Sioux City, then the said Pacific Company was authorized, and required,

to construct a railroad from Sioux City so as to connect with the second branch aforesaid at some point to be fixed by the President.

Section 15 provided "that any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect its road with the road and branches provided for by this Act at such places, and upon such just and equitable terms, as the President of the United States may prescribe."

At the time this Act of 1862 was passed, there was no railroad constructed to the Missouri River at or near Council Bluffs, but a railroad was in process of construction through the state of Iowa from its eastern border to the Missouri River; and in 1864, in the amendment of the Pacific Railroad Act, it was among other things provided, "that to enable any one of said corporations to make convenient and necessary connections with other roads, it is hereby authorized to establish and maintain all necessary ferries upon and across the Missouri River, and other rivers, which its road may pass in its course; and authority is hereby given said corporation to construct bridges over said Missouri River, and all other rivers, for the convenience of said road."

By Section 15 of the Act the several companies were required to operate and use their roads as one continuous line, "and to secure equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the business of the roads of either or any of said companies."

On June 15, 1866, an Act was approved, C. 124, 14 Stat. 66, "to facilitate commercial, postal and military communication among the several states," carried forward as Section 5258 of the Revised Statutes, which provided that "every railroad company in the United States, whose road is operated by steam, its successors and assigns be, and is hereby, authorized to carry upon and over its road, boats, bridges and ferries, all passengers, troops, government supplies, mails, freights and property on their way from any state to another state, and to receive compensation therefor, **and to connect with roads of other states so as to form continuous lines for the transportation of the same to the place of destination.*"

The great scheme of Congress here laid out was to construct a Pacific railroad from the one-hundredth meridian to the Pacific Ocean, and to connect the east end of that road with three branches—one

*Italics are ours.

from the initial point aforesaid eastward to the mouth of the Kansas River, where it was to connect with a railroad from St. Louis, thus making it a continuous line to the Pacific Ocean; another branch from the initial point aforesaid to a point on the western boundary of the state of Iowa, fixed by the President, where it was to connect with lines from the East, as it was required to do by the fifteenth section of the Act of 1862; and the other branch, when some line was built from Minnesota or Iowa to Sioux City, was to be built from Sioux City to such a point on the second branch aforesaid as should be fixed by the President. The Sioux City & Pacific road was afterwards constructed under this section. And to make the connections more perfect between the Union Pacific and any other lines that should be constructed to the west line of Iowa, and thus make continuous lines of transportation from the East to the Pacific Ocean, Section 9 provided that the Union Pacific Company was authorized to construct a bridge across the Missouri River.

Counsel argues that the act of 1871 was passed simply to allow the Union Pacific Company to make connections at Council Bluffs with lines constructed East. The Union Pacific Company was already authorized to construct a bridge for this purpose; it

was already required by the fifteenth section o
Act of 1862 to connect with all roads.

That the interpretation we give these Acts i
correct one is shown by the opinion of the Sup
Court of the United States in the case of
*Pacific Company v. Hall*, 91 U. S., pp. 344, 34
346 of the opinion. The court, by Mr. Justice
after stating the substance of the Pacific Rai
Acts substantially as we have done, said:

U. P. Co. v. Hall, 91 U. S. 345, 346.

> "The scheme of the Act of Congress,
> is very apparent. It was to secure the
> nection of the main line, by at least
> branches, with the Missouri and Iowa
> roads, and with a railroad running eastw
> from Sioux City in Iowa, either through
> state or through Minnesota. An obser
> of this scheme, we think, will aid in con
> ing the inquiry at what place the Act of
> gress, and the orders of the President ma
> pursuance thereof, established the easter
> minus of the Iowa branch. From it may
> sonably be inferred that the purpose of
> gress was to provide for the connectio
> the branches of the main line of the
> Pacific road with railroads running th
> the states on the east of the Territory, a

provide for those connections within those states, at points at or near their western boundaries."

Again, the Court said, on page 353:

"To hold that the bridge is not a part of the road would defeat the plain object Congress had in view in 1862 and 1864,—a continuous line for connection with the Iowa roads."

In *United States v. Union Pacific R. R. Co.*, 91 U. S., p. 80, Mr. Justice Davis, speaking for the court, said:

U. S. v. U. P. R. R. Co., 91 U. S. 80.

"This enterprise was viewed as a national undertaking for national purposes; and the public mind was directed to the end in view, rather than to the particular means of securing it. Although this road was a military necessity, there were other reasons active at the time in producing an opinion for its completion besides the protection of an exposed frontier. There was a vast unpeopled territory lying between the Missouri and Sacramento Rivers which was practically worthless without the facilities afforded by a railroad for the transportation of persons and property. With its construction, the agricultural and

mineral resources of this territory could
developed, settlements made where set
ments were possible, and thereby the wea
and the power of the United States larg
increased; and there was also the pressi
want, in time of peace even, of an improv
and cheaper method for the transportation
the mails, and of supplies for the army a
the Indians."

We come now to the consideration of the Act
1871. As said by the Supreme Court of the Unit
States in the Rock Island case: "Several roads h
been built from the East to Council Bluffs, and oth
were building, and roads were in process of constr
tion in Nebraska, with Omaha as their terminus
The Union Pacific Company had not commenced
line at a point on the western boundary of Iowa, b
at a point in Section 10, in Omaha, and had built t
road to a connection with the Central Pacific ro
near Ogden, Utah, in May, 1869; but being witho
funds to construct the bridge across the Missou
River to its terminus fixed by President Lincoln,
applied to Congress and procured the passage of t
Act of 1871. The testimony shows, and it is perfe
ly evident, why this application was made. If it h
constructed this part of the road, including t

bridge, under the Acts of 1862 and 1864, it would have received but $16,000 per mile in government bonds, and an equal amount of the first mortgage bonds of the Union Pacific Railroad Company issued under the Act of 1864. As shown by the testimony of General Dodge, it could not build the bridge, depot, terminals, and tracks connected therewith in Omaha and Council Bluffs, with this amount of money. It therefore applied and got authority from Congress to raise money by mortgage, which should take precedence of the government lien, and the first mortgage upon the Union Pacific road. As a matter of fact no subsidy bonds were issued for this part of the Union Pacific line, nor were any bonds issued under the first mortgage for this mileage. For the purpose of constructing the bridge, the depots, and the tracks connected therewith, in Council Bluffs and Omaha, $2,500,000 of bonds were issued, which bonds were sold and the proceeds used in the construction of the line from the eastern terminus to a connection with the main line at or near Twentieth Street in Omaha. This Act of Congress provided:

Act 1871.

* "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, *That for the more perfect connection of any railroads that are*

*All the italics are ours.

*or shall be constructed to the Missouri Rive*
*or near Council Bluffs, Iowa, and Om*
*Nebraska*, the Union Pacific Railroad C
pany be, and it is hereby, authorized to is
such bonds, and secure the same by mortg
on the bridge and approaches and appu
nances, as it may deem needful to constr
and maintain its bridge over said river,
*the tracks and depots required to perfect*
*same, as now authorized by law of Congr*
and said bridge may be so constructed a
provide for the passage of ordinary vehi
and travel, and said company may levy
collect tolls and charges for the use of
same; *and for the use and protection of*
*bridge and property, the Union Pacific R*
*road Company shall be empowered, gove*
*and limited by the provisions of the Act ent*
'An act to authorize the construction of
tain bridges, and to establish them as p
roads,' approved July 25, 1866, so far as
same is applicable thereto: And provi
That nothing in this Act shall be so constr
as to change the eastern terminus of the Un
Pacific Railroad from the place where it is
fixed under existing laws, *nor to release*

*Union Pacific Railroad Company, or its successors, from its obligations as established by existing laws:* Provided, also, That Congress shall at all times have power to regulate said bridge, and the rates for the transportation of freight and passengers over the same, and the local travel hereinbefore provided for. And the amount of bonds herein authorized shall not exceed two and a half million of dollars: Provided, That if said bridge shall be constructed as a draw bridge, the same shall be constructed with spans of not less than two hundred feet in length in the clear on each side of the central or pivot pier of the draw."

Turning to this Act, it authorized the construction of certain bridges across the Mississippi River at Quincy, Illinois. (14 Stat. 244.) It provides, among other things, as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose, to build a bridge across the Mississippi River at Quincy, Illinois, and to lay on and

Act 1866.

over said bridge railway tracks, *for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at or opposite said point, shall be allowed to cross said bridge for reasonable compensation*, to be made to the owners of said bridge, under the limitations and conditions hereinafter provided."

This latter act provided for the construction of nine bridges; the first one being the bridge at Quincy, Illinois. The next seven were required to be constructed under the same terms and subject to the same restrictions as to their use by other companies as provided for by the first section above-mentioned. The ninth bridge was across the Mississippi River at St. Louis, to be constructed by the St. Louis & Illinois Bridge Company, and subject to all the conditions contained in the charter of that company, which was granted by the legislatures both of Illinois and Missouri, and required the company to allow the trains of all other companies to run over the bridge. It was strenuously insisted in the court below that the ninth bridge authorized by the eleventh section of the Act of 1866, to-wit, the bridge provided for by the City of St. Louis, was not made subject

to use by other companies, and therefore the Act of 1871 in providing that the use of the Union Pacific bridge should be governed by the provisions of the Act of 1866 could not have had reference to any provisions of that Act which were not applicable to all the bridges authorized thereunder.

We think the argument of little force, but we insisted at the time that counsel was in error, for the reason that under the eleventh section it was provided that the bridge there constructed was to be "subject to all the conditions contained in said act of incorporation and amendments thereto," and that the act of incorporation required its use by other companies. We have since examined this question, and we attach to this brief, as Appendix A, pages 297 to 324, copies of the acts of the legislatures of Illinois and Missouri, together with an explanation thereof, which show that the charter of this Bridge Company contained a clause requiring its use by other companies.

It, therefore, appears that every section of the act of 1866 required the bridges, provided for therein, to be open to the use of all railroad companies.

The policy of Congress, with respect to bridges over important streams, as shown by an

We cite in Appendix B pages 325 to 356 several hundred acts of congress authorizing the construction of bridges across various navigable waters, and

examination of all its bridge acts.

with scarcely an exception they require the said bridges to be open to the use of any other railway companies for the purpose of running their trains over the same. One of said acts, passed Feb. 21, 1868, 15 Stat. 37, authorizes the construction of a bridge across the Mississippi River by the Southern Minnesota Railroad Company, and is made subject to all the terms, conditions, restrictions and requirements of the foregoing Act of July 25, 1866, referred to in the Act of 1871. So that when the Act of 1871 was passed, there were ten bridges authorized by Congress, all of them subject to the same conditions as to use by other companies, imposed upon the Quincy bridge by the first section of the Act of 1866.

We have, therefore, in the Union Pacific Railway acts of 1862 and 1864, as interpreted by the Supreme Court of the United States, the intention of congress of forming through-lines of transportation from the Missouri River to the Pacific Ocean, and connecting those lines of railway with the lines of railway to be constructed to the Missouri River from the East. This policy is clearly expressed, this obligation clearly imposed upon the Union Pacific by the Pacific Railway acts before the enactment of the Act of 1871. It was not at that time seen that railroads would be built to the West beyond the Missis

sippi River in advance of settlement, and therefore, in the Acts of 1862 and 1864, congress did not provide for any connections between any roads except the Pacific roads and those built to the Missouri River from the East.

But shortly after those acts were passed, this railway construction began; the rapid development and extension of western railways was inaugurated, and various lines of railway were extending with great rapidity toward and beyond the Missouri River. It was seen that if every one of these railways should build its own separate bridge across each of the important streams, the navigation of these streams would be seriously endangered. Congress, therefore, had a two-fold problem presented. Its policy was to encourage and foster the multiplication of railway lines from the East to the West, and at the same time to preserve the navigable streams which, up to said time, had been the principal highways of commerce. Congress, therefore, in order at the same time to encourage the construction of railways and to keep the navigable streams as free as possible from obstruction, adopted the policy of providing that whenever a bridge was authorized to be constructed across an important navigable stream, such bridge should be open to the use of all railroads

whose tracks should reach it at either end. B
the passage of the Act of 1871, this policy of
gress had been announced in the Bridge Act of
providing for the construction of nine bridges,
Act of 1868 for the construction of the Sou
Minnesota bridge, and in various other acts p
ing for the construction of bridges, passed be
1866 and 1871. (Appendix pages 325 to 329.)

This history of the Acts of Congress of the
and of the development of railways in relat
these bridges, is important in throwing light
the construction to be placed upon the Act of
As Mr. Justice Davis said, in 91 U. S.:

In construing a statute, courts may recur to the times when it was passed.

> "But courts in construing a statut
> with propriety recur to the history
> times when it was passed, and this is fre
> ly necessary in order to ascertain the
> as well as the meaning of particular pro
> in it."

As said by Mr. Justice Peckham in the
Missouri case:

> "The public policy of the governm
> to be found in its statutes."

This was the condition of the country and
legislation in relation to railway bridges wh

Act of 1871 was passed, and the recitals and provisions of the Act of 1866 are very important in throwing light upon the recitals and provisions of the Act of 1871.

We have seen that each of the sections of that Act, authorizing nine different bridges to be constructed across the Missouri and Mississippi Rivers, should be read as though the declaration of the object of Congress in constructing the bridge and in providing for the use thereof had been written into each separate section. Note the language. It was for the "more perfect connection of any railroads that *are or shall be* constructed to said river at or opposite said point" that the bridge was authorized to be constructed, and that "*all trains of all roads* terminating at said river at or opposite said point shall be allowed to cross said bridge for reasonable compensation to be made to the owners of the bridge."

These nine bridges, therefore, were authorized to be constructed, some by railroad companies and some by bridge companies, for the purpose of making more perfect connections between all railroads reaching opposite banks of the river. Having this in mind, and having in mind the new conditions confronting Congress, it has an important bearing upon the construction to be placed upon the Act of 1871.

The acts embodying these provisions must be given the same construction as the Act of 1866 applied to the nine bridges therein provided for in order to effectuate the objects Congress evidently had in mind.

This also became the general policy of Congress in the construction of nearly every bridge authorized to be built across the navigable waters of the country from that day to the present time.

Provisions of acts of 1866 and 1871, exactly the same.

We come now to the particular provisions of the Act of 1871. We find that this act contains exactly the same recital as does the Act of 1866. The draftsman must have had the latter act before him, for the recital contains the same language. It provides "*that for the more perfect connection of any railroads that are or shall be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company be and it is hereby authorized*" etc.; intending, undoubtedly, to accomplish the same object that had been accomplished by Congress in the Act of 1866, and by the many other Acts referred to in the appendix to this brief. Not a connection by the Union Pacific Company with the lines reaching Council Bluffs from the East—this was already provided for by the Acts of 1862 and 1864. It was then known

that railroads were being constructed to Council Bluffs from the East and to Omaha from the West. Congress had in mind a different situation than was in existence in 1862, to-wit, the connections of all these lines of railways by this important link at Omaha.

But it is claimed that the Act of 1871 meant a more perfect connection with the Union Pacific Railroad at Council Bluffs. The Act does not so provide. It provides for the "more perfect connection of all railroads" that then were or "should thereafter be constructed to the Missouri River at or near Council Bluffs" with all railroads that then were "or should thereafter be constructed to the Missouri River at or near Omaha, Nebraska." How the construction of a bridge could aid these railroads to make a connection with each other if they could not use the bridge is more than we can understand. Furthermore, how would the bridge enable the Union Pacific Company to make a more perfect connection with railroads built "to the Missouri River at or near Omaha, Nebraska?" No bridge was necessary for it to connect with such roads. In the court below, the appellant stated its position as follows (page 103 of brief):

Appellant's statement of its position.

"Construing this language 'constructed to the Missouri River at or near Council Bluffs, Iowa, or Omaha, Nebraska,' in connection with the language found in the Act of 1866, it means (if we concede that authority is given to cross) that any road terminating at or near Council Bluffs, Iowa, should have the right to cross the bridge over the Missouri River and enter Omaha, Nebraska. That any road terminating at or near Omaha, Nebraska should have the right to cross the bridge and enter Council Bluffs, Iowa."

This is a most amazing interpretation placed upon this Act to prevent the complainant from going beyond Twentieth Street in Omaha to reach the roads constructed to a place "at or near Omaha," to-wit: South Omaha. If the bridge is the only intervening structure of the Union Pacific road that the other companies have a right to use, then a road constructed to a point "at or near Council Bluffs, Iowa," would have no right to go over the intervening track to reach the bridge; but if it has a right to go over intervening track to reach the bridge, it has a right to go over intervening track beyond the bridge in Omaha sufficient to connect with the lines built to a place "at or near Omaha." This seems to us an ab-

solute demonstration; and the rules of construction which counsel is invoking in this case are too technical to receive the favorable consideration of a court of equity.—*Joy v. St. Louis*, 138 U. S. 1. It, therefore, being the intention of the Act of 1871 to make connections between the Eastern and Western lines, it provided "that for the use and protection of said bridge and property, the Union Pacific Railroad Company shall be empowered, governed and limited by the provisions of the Act of 1866," incorporating therein those provisions, intending to accomplish the same objects as were accomplished by that Act. How could it more appropriately have made the provisions of the Act of 1866 applicable to the bridge, its approaches and tracks connected therewith, than by the use of this language,—in the "use of said property" it was to be "governed by the Act of 1866." Counsel would have this court believe that in view of the fact that the Acts of 1862 and 1864 required the Union Pacific Company to construct a bridge, and make connections at Council Bluffs; in view of the plan of Congress to require all bridges to be used by other companies; in view of its policy, expressed in the Act of 1866, to require the bridge to be used by other companies for the purpose of making connections between the lines reaching opposite banks of

said river—that this provision in the Act of 1871, applying the Act of 1866 to the Union Pacific Bridge, was meant to refer only to those minor provisions of Sections 2 and 3, regulating the manner of construction of the Quincy Bridge.

Let us consider Sections 2 and 3. The first proviso of section 2 may apply only to the bridge at Quincy, but however that may be the second proviso refers to every bridge built under the Act. It provides for a pivot draw bridge, with spans of not less than 150 feet in length on each side of the central or pivot pier of the draw; the next span thereafter to be 250 feet; the height of the spans above the water, and that the spans shall be parallel to the current of the river. The Act of 1871 provided that the spans in the Union Pacific bridge should be 250 feet in the clear on each side of the central or pivot pier of the draw; so that the provisions of Section 2 of the Act of 1866 could not have applied to the Union Pacific bridge. The next provision of Section 2 is, in substance, that the draw shall be opened promptly upon signal for the passage of boats, and that in no case shall unnecessary delay occur in opening the draw during and after the passage of trains. Section 9 of the Act of 1864, applying to the Union Pacific bridge, provides

that the bridge shall be constructed with proper piers for the passage of boats, and that "the same shall be built, kept and maintained at the expense of said company in such a manner as not to impair the use of said river for navigation to any greater extent than such structures of the most approved character necessarily do." So we have a clause in the Acts of 1864 and 1871 specifically providing for the matters covered by Section 2 in the Act of 1866, and providing for them in such a manner as to conflict with the principal provisions of this Act.

Sec. 3, Act of 1866, does not apply to U. P. bridge.

Section 3 evidently was not one of the provisions of the Act of 1866 which Congress intended to apply to the Union Pacific bridge, for the reason that its provisions conflict with the provisions of the Union Pacific charter, or the matters therein are otherwise provided for by the Act of 1871. Section 3 of the Act of 1866 is as follows:

> "That any bridge constructed under this Act, and according to its limitations, shall be a lawful structure, and shall be recognized and known as a post route; upon which, also, no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for their trans-

portation over the railroads or public highways leading to the said bridge."

This did not apply, because the Union Pacific Act—Section 6—specifically provided what the rate of transportation should be, and created the bridge a post route; and it has been so held by the Supreme Court of the United States. In the cases of the *Union Pacific Railroad Company v. United States*, 104 U. S. 666, and *Union Pacific Railroad Company v. United States*, 117 U. S. 355, it was held that this provision of Section 3 as to post routes, "upon which, also, no higher charge shall be made for the transmission of mails," etc., than on other roads leading to the Quincy, or other bridges, did not apply to the Union Pacific Bridge, for the reason that the provisions of the Pacific Act of 1862, Section 6, providing in substance that the Government was to have the use of the road for *reasonable compensation*, not exceeding the amount paid for the same kind of service, applied to the bridge, and was a contract between the Government and the Union Pacific Company. We have, therefore, the decision of the Supreme Court of the United States that this provision of the Act of 1866 was not one of the provisions governing the use of the Union Pacific Bridge referred to in the Act of 1871, and presumably, the Union Pacific Com-

pany insisted upon this construction. It now insists on a contrary construction. But great stress is laid in the argument upon the fact that this third section of the Act of 1866, creates the bridge a post route. The Union Pacific Railroad Acts created it a post route, and provided for the rate for carrying "mails, troops and munitions of war over the same"—Section 6, Act of 1862. It also required that the whole line should be operated, so far as the public and the government were concerned, as one connected, continuous line. But the counsel says that at that time it was contended by able lawyers, and by the dissenting opinion of the Supreme Court of the United States, that the bridge was not a part of the Union Pacific Railroad—*Hall v. Union Pacific Company*, 91 U. S. 343.

It is strange that if this provision in the Act of 1866—Section 3—creating the Quincy bridge a post route was of such great importance, and was the principal thing referred to in the Act of 1871, that the Supreme Court of the United States, and the able counsel who represented the Union Pacific Company, and the Government, in that case did not discover it —for this provision is not mentioned as one of the reasons for holding the bridge a part of the Union Pacific line; but the case was decided upon the

ground that the Union Pacific Company was required to build its line to a point fixed by the President, on the western boundary of the State of Iowa. Furthermore, prior to the passage of the Act of 1871, there was a General Act of Congress (14 Stat. 66, Revised Statutes, 5258), constituting all railroads, railroad bridges and ferries post routes. It will also be noted that the Bridge Act of 1871 provided that the company might levy tolls and charges for the use of the bridge, and that the Government should always have power to regulate the same. This, therefore, must be held to be exclusive of the provisions of Section 3, of the Act of 1866. It, therefore, appears that every provision in Sections 2 and 3, regulating the bridge, were otherwise provided for by the Pacific Acts. On principle, therefore, in the absence of any decision, it seems to us trivial to claim that in this most important declaration in the Act of 1871 all that Congress had in mind was the manner of constructing the bridge — that it should be a lawful structure, and be a post route, and regulating the charges for the "transmission of mails, troops," etc., when all of these things were otherwise provided for by the Pacific Acts.

**The tripartite agreement gave the complainant the right to use the bridge and the tracks connected therewith, and is also valuable as an interpretation of the meaning of the Act of Congress of 1871.**

Tripartite agreement as an interpretation of the act of 1871.

All doubt as to the meaning of the Act of Congress, as it was understood by the people, by the Congress, and by the Union Pacific Company, at the time, is removed when we come to consider the tripartite agreement. It appears by the record in this case that the County of Douglas voted $250,000 of bonds, and donated the bonds to the Union Pacific Company, for the purpose of constructing a bridge, depot, and tracks connected therewith; that the people of that county were anxious to have the bridge constructed at Omaha instead of some miles below; that railroads had been constructed, and were being constructed, to the Missouri River at Council Bluffs, and at Omaha, Nebraska. The resolution submitting the proposition to the electors, provided as follows—Record, page 267:

As provided by the County in donating its $250,000 of bonds;

> "Shall the County of Douglas, for the purpose of securing the location and aiding in the construction of a railroad bridge across the Missouri River, between the Union Pacific Railroad, and such other roads as may seek a connection therewith at Omaha City in said

county, contribute thereto in county bonds the sum of $250,000?" etc.

by the City, in donating its $200,000 of bonds.

It appears, also, that the City voted $200,000 of bonds, and that the proceeds were used to purchase real estate for bridge purposes and depot grounds, and this property was deeded to the Union Pacific Company upon the covenants and conditions stated in an agreement entered into between the Union Pacific Company, the County of Douglas, and the City of Omaha.—See bill of complaint, p. 22.

Now, let us see what the object was which the people of that City and County undertook to accomplish. The party who drew that contract had the Act of Congress of 1871 before him, because the recital in the contract is copied *verbatim et literatim* from the Act of Congress. The contract recites that—Bill of Complaint, page 22; Record, page 21:

> "Whereas, the parties hereunto desire to arrange for the more perfect connection of any railroads that are or shall be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska."

To carry out this declaration of the object of making this contract, and these donations of bonds and money, what did the Union Pacific Company contract to do? Turning to Subdivision 6, we find the following:

"Sixth. That under proper rules for their regulation to be prescribed by said party of the first part, the trains, cars and engines of all railroads, now or hereafter running into or out of Omaha and Council Bluffs, shall have unobstructed access and transit to and over said Bridge and its approaches, and such roads shall have the right to take, or cause to be taken, their trains, cars and engines, with their freight and passengers, over and across said bridge and its approaches, at reasonable compensation without discrimination, hindrance, preference or delay."

What the Union Pac. Co. agreed to do.

At that time the people of Omaha and County of Douglas knew that railway lines were being constructed to Council Bluffs from the East, and to, or near Omaha from the West. They wished to create Omaha the crossing, and the gateway, through which the commerce of the United States would flow to the great undeveloped territory lying beyond the Missouri River. They stated their objects in the recitals in the tripartite agreement; they voted a large sum of money to carry out these objects. Now, we are told that in any event only the bridge was referred to, or if more than the bridge, only to Twentieth Street in Omaha.

This contract and the Act of Congress must be liberally construed, and we must look at both, and to the circumstances and conditions surrounding the situation, in order to arrive at what was intended by the parties. Taking the recitals, and subdivision 6 together, they provided, in substance, that for the purpose of connecting any railroads that then were, or thereafter should be, constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska, the trains, cars and engines of all said railroads then, or thereafter, running into Omaha and Council Bluffs, should have unobstructed access to and over said bridge, and its approaches, and that they should have the right to take their trains, cars and engines over the same without "discrimination, hindrance, preference or delay;" that the object was to form a connection upon the said transfer grounds between all roads which then, or might thereafter, begin or end in Omaha and Council Bluffs, or pass through Omaha and Council Bluffs. Furthermore, the language is "Unobstructed access and transit *to* and over said bridge, and its approaches,"—not over the bridge alone, but *to* the bridge for the purpose of making connections between the various lines of road. So, too, the Act of 1871, as the court has already held, must be construed liberally, and in the

light of the objects to be accomplished, and the circumstances as they existed at that time. The use of the bridge was not alone provided for, but the use of the depots and tracks connected therewith necessary to carry out the intention of Congress, to-wit, so much of said property as was necessary to make connections between the railroads then, or thereafter, constructed to the river at or near Council Bluffs and Omaha. It was not merely the bridge, constructed under the Act of 1871, that was to be used; but the use of the bridge *and property*, was to be "governed" by the Act of 1866. What bridge and property? The bridge and property necessary to make connections between the Eastern and Western lines.

It is not denied that if the Act of 1866 applies, the use of the property granted was not for a less amount than was mortgaged under the Act of 1871. This would include the property to Twentieth Street, and the depots and tracks connected therewith. But it is not limited to this. The Act is to have a liberal construction for the purposes of making the connections, and the complainant has a right to use whatever tracks connected with the bridge are necessary to make the connections between it and the other lines. By accepting the terms of this Act, and accepting the donation from the City

under the covenants of the tripartite agreement, the Union Pacific Company, and its successors, agreed with the people of Omaha and the County of Douglas that any company might have the use of so much of the property as was necessary to make these connections between the different lines of road.

Counsel contends that line constructed to South Omaha is not to the Missouri river.

But it is claimed that a line constructed to South Omaha is not constructed to the Missouri River, and that South Omaha was not in existence when this Act was passed and the tripartite agreement made. This is a narrow construction. The people were not contracting for the benefit of a City as it then existed, but for the future. Omaha was expected to grow, and "to the Missouri River at or near Omaha" must have a reasonable and liberal construction. South Omaha is as near the Missouri River as the tracks of the lines converging at Council Bluffs, and yet counsel makes no question that the complainant has a right to run over these tracks—if it has a right to run over the bridge. Of what benefit would it have been to the citizens of Omaha to contract that any railroad company might run its trains over this bridge without the use of the tracks approaching the bridge, and the depots and terminals, and such tracks as were necessary to make connections between the Eastern and Western lines, and

to make this point the converging point of all the railway lines leading to the West? It was well known then that it was not possible to construct lines through the heart of large cities. How could the Union Pacific Company have guaranteed that the passengers and freight of all connecting lines should be transferred upon the grounds described in the Saunders deed, if the connecting lines only had the right to run their trains over the bridge? How could they have accomplished the object of making a "permanent and operating connection between the railroads desiring such connections, which do, or may, begin or end in, or pass through, Omaha and Council Bluffs, and the tracks and business of said roads" if the use was limited to the bridge?

As we said before, has the complainant not as much right to run its trains between Twentieth Street in Omaha to South Omaha, to a connection with the lines converging there, as it has to run its trains from the Union Passenger Transfer depot in Council Bluffs—where the Eastern lines converge—to the bridge? Both are necessary to make the proper connections. Why is it that appellant is so strenuous in its claim that the complainant must not use the property between Twentieth Street and South Omaha? It is because it knows that the testimony

Appellant's aim.

in this case shows that to run to Twentieth Street would only place the road in a *cul-de-sac*. From this point complainant cannot construct a road to South Omaha where are located the largest industries in the State of Nebraska. On the south is the Burlington road; its elevation is such that no road leaving the Union Pacific can go under or over it. On the north at Twentieth Street are the Government's buildings, and tracks leading thereto at different grades, so that no road can pass over, or under, or across them at grade. The Union Pacific Company owns a large amount of property which it would be necessary to go through, the condemnation of which is exceedingly doubtful under the laws of Nebraska. Furthermore, it appears by the testimony of Mr. Stickney that a line cannot be constructed parallel to the Union Pacific line from the bridge to South Omaha. The line runs most of the way through a narrow ravine; it is lined with large buildings, part of the way by other railway tracks, and runs through the very heart of the City. No serious claim is made that such a line can be constructed. Now, then, if counsel's position is true—that the complainant can run its trains across the bridge, and as far as Twentieth Street, but cannot cover the intervening two miles between Twentieth Street and the place where

Impediments to the construction of a road to South Omaha.

these other lines connect with the Union Pacific road —the declared object of Congress, and of the people of Omaha and Douglas County, is frustrated.

We will hereafter show that the Union Pacific Company has created this property as a terminal and connecting link; that it has allowed the other companies to use the same in pursuance of a duty imposed upon it by the Act of Congress, as construed by the Supreme Court of the United States. Furthermore, the tripartite agreement requires the Union Pacific Company to allow the complainant to use it without "discrimination" or "preference." Would it not be a discrimination to allow one company to use tracks sufficient to make all connections between the Eastern and Western lines, and another company not?

Interpretation by the bridge mortgages.

Some light is thrown upon the intention of Congress, as well as of the First and Second Pacific Companies, by an examination of these mortgages. The first bridge mortgage, Complainant's Exhibit 1, was made immediately after the passage of this Act, and its declarations are exceedingly potent in the interpretation to be placed upon the Act of 1871. It will be noted that this mortgage recites that Congress had by this Act authorized the construction of a bridge and railroad lines across the Missouri River,

between Omaha, in the State of Nebraska, and Council Bluffs, in the State of Iowa; not merely a bridge, but a bridge and railroad lines. It further recites that "Whereas, the Company for the purpose of purchasing and acquiring the lands and materials necessary for the construction of said bridge, its approaches and connecting lines, and for constructing the same has determined to obtain a loan of money," etc. The mortgage, Bill of Complaint, page 74, conveys "all and singular the said bridge over the Missouri River, between Omaha and Council Bluffs, and the approaches thereof, and the appurtenances belonging thereto, including all parts and portions of the said bridge now constructed, or hereafter to be constructed, and the depots at Council Bluffs and Omaha as aforesaid, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the neighboring lines, including in this conveyance as well the lines and tracks now constructed, as those which may be hereafter constructed," etc. Again, we specifically call the Court's attention to Article 1, of this mortgage, page 69, Bill of Complaint. It authorizes the trustees to levy bridge tolls "upon all property and passengers to be transported over, or which shall use or have the benefit of the said bridge, or the de-

Recital in first mortgage of reason for making loan.

pots connected therewith, at Council Bluffs or Omaha, or the lines of track required to connect the said bridge with the railways having their terminus at Omaha and Council Bluffs." Here in this mortgage are the declarations of the parties that the object of constructing this bridge, the tracks and depots, is for the purpose of connecting lines of railways that are or may be constructed to points at or near Council Bluffs and Omaha; and the trustees are authorized to levy tolls upon property and passengers transported over the bridge and depots "**or the lines of track required to connect the said bridge with the railways having their terminus in Omaha and Council Bluffs.*" No clearer declaration could be made than that this mortgage was made for the purpose of obtaining connections between the eastern and the western lines—between lines constructed to a point at or near Council Bluffs, and lines constructed to a point at or near Omaha. It was this property, not necessarily the property covered by the mortgage, but the property necessary to connect these various lines, which the Union Pacific Railroad Company, and its successors, contracted that other Companies might forever use. The question is, do these lines at South Omaha terminate at or near Omaha? Of this there can be no question. It makes no difference

The clear declaration of the mortgage.

*Italics are ours.

whether the tolls have been collected for the trans
portation of property from Council Bluffs to Sout
Omaha or Gilmore, or any other point, or whether th
tolls were limited to the bridge. It received th
right to levy separate tolls over all tracks necessar
to connect the eastern and western lines. This mort
gage was an acceptance in the broadest terms of a
of the benefits to be derived from the Bridge Act o
1871, and it imposed upon the property a perpetua
easement for the benefit of all Companies construct
ing their lines to a point at or near Omaha or Counc
Bluffs.

Growth of Omaha and South Omaha.

It appears in this case, and it is a fact of whic
the court will take judicial notice, that at the tim
the bridge, the depots and tracks connected there
with, as far as Twentieth Street, were constructed
the City of Omaha was a small place; that since sai
time it has grown into a city of 125,000 people; tha
immediately adjoining it on the south is South Oma
ha, which although a separate city so far as its cor
porate entity is concerned, is practically the sam
city, its business interests being identical with thos
of Omaha. It is a large business center. It has fiv
lines of railroad terminating within its limits, and
within a short distance of the limits of Omaha. Cer

tainly, these roads come within the definition of Congress of roads "at or near Omaha, Nebraska."

It appears that about the year 1883 or 1884 the stock yards were located at South Omaha, and the first packing houses constructed. From that day to the present time the stock yards and the packing house industries have increased, until today more than 172,000 cars per annum are transferred over the Union Stock Yards tracks to and from these industries.

It has become a great railroad terminal, and the Union Pacific line from Council Bluffs to South Omaha is a link between all of the eastern and western lines, which the Union Pacific Company has allowed all other railroad companies to use, and only denies this right to the complainant.

It appears, furthermore, that from time to time as the business required, the Union Pacific Company added additional tracks and side tracks and yard tracks, for switching and handling cars; that in its time table it is designated as the "Bridge District;" it is treated as a part of the Bridge Division; and it appears by the testimony that from Council Bluffs to Gilmore is one continuous yard, used by all these lines as a connection between the eastern and western lines.

Our request no more than was decreed by court in *Rock Island* case.

We ask no more in this case than the court in the Rock Island case said the Pacific Company was obliged by the Act of Congress to give to the Rock Island Company. We ask the same rights granted to the Rock Island, Milwaukee, Northwestern, and to all other companies using these terminals. It is perfectly evident that this is no new construction to the Union Pacific Company. It sought and obtained aid from Congress, and from the City of Omaha and County of Douglas, upon this express condition. To deny the Mason City Company the rights to use the bridge, depots and tracks connected therewith, is to allow the Union Pacific Company to violate its public contracts with the people of Omaha and County of Douglas, and to violate its solemn contract with the Government.

These contracts should be liberally construed to carry out the public benefits, and the objects sought to be obtained. If there is any reasonable doubt in the minds of the court as to the proper construction to be placed upon these Acts, and the tripartite agreement, the doubt should be resolved in favor of the public.

Appellant claims that before we demand the right to take the Union Pacific Company's property we should show clear statutory authority. We ar

not demanding the right to take the Union Pacific Company's property. We are simply demanding the right to the use of that property for reasonable compensation, on the same terms granted to other companies, which this Court said in the Rock Island case was the mere regulation of its use for reasonable compensation, in pursuance of a wise public policy.

Before the present company acquired this road, bridge and terminals, the right of other roads to use this property was decreed by the District Court of Douglas County in *Stuht v. Union Pacific Co.*,* and by the Supreme Court of the United States in the *Rock Island* case. Not only that, but the Attorney General of the United States in an opinion delivered in 1873, held as follows:

> "From the foregoing it appears that under the Act of February 24, 1871, and the provisions of the Act of July 25, 1866, thereby adopted, the privilege of crossing the bridge with their trains is secured to other railroad companies besides the Union Pacific Company, for reasonable compensation to be made to the latter." 14 *Opinions of Attorneys General* 235.

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*(See opinion p. 244 and 249, Vol. 1, Record.)

Lathrop v. Junction Ry. Co.

In the case of *Lathrop v. Junction Ry. Co.*, et al., 4 Fed., 41, the Pennsylvania Railroad Company, the Philadelphia & Reading Railroad Company, and the Philadelphia, Wilmington & Baltimore Railroad Company, were operating three lines of railway terminating in the City of Philadelphia east of the Schuylkill River. In 1860 a charter was obtained from the Legislature to build a road known as the Junction Railway, for the purpose of connecting these three lines of road. All but a few shares were taken by the three companies. In constructing the road a portion of the middle section was built on land belonging to the Pennsylvania Railroad, and the officers of the Junction Railway were the same as the officers of the Pennsylvania. The Pennsylvania Company claimed to own this section of the road, and the Supreme Court of Pennsylvania held that this part of the property belonged to that Company. The Philadelphia & Reading Company became, in connection with the Baltimore & Ohio Company, a competing line to the Pennsylvania Company, and that company refused to allow the freight of the Reading and Baltimore & Ohio Companies to be carried over this strip of track in the center of the Junction Railway's lines. The Court held that the Pennsylvania and the Reading Companies, having constructed this

line of road for the purpose of making a connection between the two lines, that the Junction Railway Company was entitled to use that part built by the Pennsylvania Company in order to carry out the objects of its construction—to form a continuous line between the three lines of railway. This shows that in construing the laws in reference to lines of public transportation the Court will give a liberal construction to carry out the intention of the Acts and to further the public interests.

So in the case of *Joy v. St. Louis*, 138 U. S., 1, which we shall hereafter refer to at some length in this brief, the Supreme Court of the United States enforced a clause in a contract which provided as follows: Joy v. St. Louis.

> "Said party of the second part shall permit, under such reasonable regulations and terms as may be agreed upon, other railroads to use its right of way through the park, and up to the terminals of its road in the City of St. Louis, on such terms, and for such fair and equitable compensation to be paid to it therefor as may be agreed upon by such companies."

This "right of way" of the "second party" was held in the hands of the successor of this company,

not only to include the right of way then owned by the second party which was detached portions between the park and the depot, but all of the right of way thereafter purchased to complete its line between the park and the Union depot in the City of St. Louis; and also that the words "right of way" included the tracks and sidings, as the tracks were a necessary incident to the enjoyment of the "right of way."—See Opinion, pp. 40, 41, 44 and 45.

The court held that these laws must be given a liberal construction in the interest of the public. The court said:

> "Railroads are common carriers, and owe duties to the public. The rights of the public in respect to these great highways of communication should be fostered by the courts; and it is one of the most useful functions of a court of equity that its methods of procedure are capable of being made such as to accommodate themselves to the development of the interests of the public, in the progress of trade and traffic, by new methods of intercourse and transportation."

We again call the court's attention to the language of Chief Justice Fuller, where he held the Act of 1871 was to be liberally construed. He said:

"It is true that it appears that from the depot to the point in South Omaha where the tracks of the companies connected, is about four miles; but the scheme of Congress was to accomplish a more perfect connection 'at or near Council Bluffs, Iowa, and Omaha, Nebraska,' and we think the distance reasonably within the terms of the Act of 1871, **liberally construed, as the Act should be.*"

We have shown that this contention was made by the counsel; that it was insisted that if the Act of 1866 applied, that it only applied to the bridge; but the court took a broad view of the objects of these Acts, and carried out the intention of Congress to form a connection between the eastern and western lines.

Practical construction placed upon these acts by Union Pacific Companies.

But all possible doubt as to the proper construction to be placed upon the Act of Congress and the tripartite agreement contained in the Saunders deed, is removed when we consider what the First Pacific Company and this defendant have done under it.

"Tell me," says Lord Chancellor Sugden, "what you have done under a deed, and I will tell you what that deed means."

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*The italics are ours.

*Attorney-General v. Drummond*, 1 Dru. & Wal. 353-366, affirmed on appeal in *Drummond v. Attorney-General*, 2 H. L., Cas. 837.

In *Chicago v. Sheldon*, 9 Wall. 50-54, the court said:

> "In cases where the language used by the parties to the contract is indefinite or ambiguous, and hence of doubtful construction, the practical interpretation of the parties themselves is entitled to great, if not controlling influence."

*C. G. W. Ry. v. Northern Pacific Ry.*, 101 Fed. 795.

*Central Trust Co. v. Wabash & St. L. & P. Ry. Co.*, 34 Fed. 254.

*Topliff v. Topliff*, 122 U. S. 121, 127, 7 Sup. Ct. 1057, 30 L. Ed. 1110.

*Steinbach v. Stewart*, 11 Wall. 567, 576, 20 L. Ed. 56.

*Hamm v. City of San Francisco*, (C. C.) 17 Fed. 119, 124.

*Mathews v. Danahy*, 26 Mo. App. 660.

*Jennings v. Machine Co.*, 138 Mass. 594.

*District of Columbia v. Gallagher*, 124 U. S. 505, 8 Sup. Ct. 585, 31 L. Ed. 526.

*Knox Co. v. Ninth Nat'l. Bank*, 147 U. S. 91, 13 Sup. Ct. 267, 37 L. Ed. 93.

*Leavitt v. Investment Co.*, 54 Fed. 439, 4 C. C. A. 425, 12 U. S. App. 193.

*Metropolitan Nat'l Bank v. Benedict Co.*, 36 U. S. App. 604, 20 C. C. A. 377, 74 Fed. 182.

The situation at the time contracts were made with various companies.

We have seen that in 1890 the Second Pacific Company made a contract with the Rock Island and with the Milwaukee Companies for the use of the property from Council Bluffs to a point one and one-half miles south of the station in South Omaha. At that time the situation was substantially the same as it is to-day. The Rock Island's lines terminated at South Omaha and at Council Bluffs. The Milwaukee's line terminated at Council Bluffs. The other lines of railway, with the exception of the Mason City & Fort Dodge, terminated at Council Bluffs. The Elkhorn, the Missouri Pacific, the Burlington, and the Union Stock Yards railway, terminated at South Omaha. The packing house and stock yards industries had grown up. To be sure, the Union Pacific Company, when the management changed, arbitrarily refused to carry out these contracts, and they were enforced by an action in the Federal Court.

After this decision the Rock Island and the Milwaukee Companies continued to use the property, and are still using it, the Rock Island under the same contract, and the Milwaukee under a new contract, which we will hereafter consider.

In 1897, the first mortgage of the Union Pacific Railroad Company, and the Government lien, was foreclosed for the purpose of a reorganization, but the present Company recognized these contracts; it made no claim, so far as it appears, that the foreclosure cut out the rights of the companies. We are bound to presume that, following the language of the Supreme Court decision, the present Company recognized its duty to allow any company to run its trains over these tracks, and it made a new contract with the Milwaukee Company in May, 1898, for the use of the identical property and substantially upon the same conditions. At substantially the same time it made a like contract with the Northwestern Company. So far as appears, the Northwestern Company never had a contract for the use of this property up to that time. On the 25th day of April, 1900, the defendant made a contract with the Missouri Pacific Company for the use of a part of this property. On the 26th day of January, 1900, the defendant made a contract with the Illinois Cen-

tral for the use of the property from about Twentieth Street to the station. On the 16th of September, 1898, it made a contract with the Omaha & St. Louis Railroad Company (now the Wabash) for the use of the property from the eastern terminus of the Union Pacific Company to the Union Station. It also appears that a contract exists by which the Burlington uses the line from Gilmore to South Omaha, and from the eastern terminus to the Burlington Depot in Omaha. No railroad has been excluded from the use of this property, as required by the Act of Congress and the Saunders deed, except the complainant. But that is not all; in the month of September, 1898, this defendant entered into a contract, (Bill of Complaint, page 173, Exhibit No. 6,) with the Northwestern, the Rock Island and Milwaukee companies, whereby it carved out a part of this property as a Union Depot, and agreed that these companies, and various other companies, should have the right to the use of the depot and its facilities on certain specific terms therein stated. Article 14 provided that the Missouri Pacific, the Elkhorn, the Omaha, the Illinois Central, the Wabash and the Omaha & St. Louis, "shall have the right to the equal use of said terminal facilities upon signing the contract," and also that "any other railroad companies by and with

Union Depot contracts.

the consent of the party of the second part (i. e. the defendant company), and upon like subscription to a copy of this agreement in possession of the parties hereto as aforesaid, shall be admitted into said depot." Mr. Burt testified that this contract had been signed by the Northwestern, the Milwaukee, the Illinois Central, the Missouri Pacific, the Rock Island and the Wabash Companies. Is it not reasonable to suppose that the defendant company made this contract in order that it might perform its duties to the City of Omaha, and the County of Douglas, under the tripartite contract of 1872? In view of the decision of this court and of the plain specific provisions of the tripartite agreement, no other construction can be placed upon this act. The acts of the defendant company under these various contracts are certainly consistent with its duty, and amount to a practical construction placed upon the Act of Congress and the tripartite agreement.

We have, therefore, in this case the clearly expressed intention of the Courts to require the Union Pacific Railroad Company to allow any railway company to run its trains over so much of the Union Pacific Company's bridge, approaches and tracks connected therewith, as is necessary to make a connection between the lines constructed to the Missouri

River, at or near Council Bluffs, Iowa, and Omaha, Nebraska. We have also the clearly expressed intention of the people of Omaha, and the County of Douglas, to accomplish the same object. They were desirous of having the bridge built at Omaha instead of at some other place; they foresaw a great market town for the western country; and a crossing of the Missouri River, to which all the railroads from the East and West should center. It was their object to make this link a transfer ground, and a connection between those lines of railroad. That object has been partially accomplished, and its fruition will have been complete when the Court again lays down the principles that as to all roads these promises and pledges to the public must be carried out. We have also the practical interpretation placed upon this law, and the tripartite agreement, by this defendant company; and, last, there is no reason urged, or can be urged, why the complainant should not have the same rights as the other companies.

It is perfectly evident to any intelligent observer that it is not practicable for any railroad crossing the Missouri River, and properly serving the business of Omaha and South Omaha, to construct a new bridge, new terminals, and a new line through the city. It would do inestimable damage to the city and

business community, as well as being practically beyond the means of any railway company.

It appears by the testimony of Messrs. A. B. Stickney and Samuel C. Stickney, that Mr. Burt, the President of the Union Pacific Railroad Company, requested the complainant to use this bridge and property upon the same terms and conditions as the other roads were using it, and offered to make the same contract. To be sure, he said it would have to be submitted and approved by the Executive Committee, but that in his opinion the Executive Committee would approve it, because it was for the interest of the Union Pacific Company to make it, that it was a good contract for them to make. No objection was made by Mr. Harriman, the Chairman of the Executive Committee of the Union Pacific Railroad Company, except that the Mason City & Fort Dodge Railroad Company should not construct a line west of the Missouri River, and that if it should start to construct such a line, its contract rights should cease; and he said he was willing to recommend to the Executive Committee such a contract as this, but he never did recommend it; he never did notify the complainant, or any officer of the complainant, that the Union Pacific Company was ready to enter into such a contract.

Under all these circumstances why should not the Mason City & Fort Dodge Railroad Company have the same right as the other companies? It is willing to pay the same compensation; it is in the interest of the complainant and the defendant and of the public, and there is no reason except the exercise of arbitrary power, so fascinating to so called "railroad magnates" of the present day. They are willing to break their contracts, show bad faith to the public, and injure themselves, in order to show their authority and their power. There is no ground in law for the denial of this right; there is no principle in equity to justify the defendant's conduct. We ask no right not granted to other companies, for which we are willing to pay the same compensation which the defendant has three times fixed as a reasonable compensation for the use of the property. No suggestion has been made that it is not adequate.

II

(a) The Saunders deed was not a conveyance upon condition subsequent as to the condition that any other railway company should have a right to run its trains over the bridge, approaches and tracks connected therewith. (p. 152.)

(b) But even as to conditions subsequent, the remedy is not confined to a forfeiture. (p. 159.)

(c) The city is not a necessary party to the suit of the Mason City & Fort Dodge Railroad Company to enforce the covenant in the tripartite agreement. (p. 170.)

(d) The remedy is not confined to a party to the original contract from whom the consideration moved, but the contract may be enforced by any railway company having a right to use the tracks under the terms of the agreement, to-wit, "All railroads now or hereafter running into or out of Omaha and Council Bluffs." (p. 181.)

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(a) The Saunders deed was not a conveyance upon condition subsequent as to the condition that any other railway company should have a right to

**run its trains over the bridge, approaches and tracks connected therewith.**

It seems to us entirely immaterial whether the conveyance of the land in the Saunders deed was upon condition subsequent or not, for the reason that the tripartite agreement, made between the Union Pacific Railroad Company, its successors and assigns, the County of Douglas, and the City of Omaha, was not a contract upon condition subsequent, but contains covenants which we seek to enforce. This agreement, although inserted in full in the Saunders deed, is distinct and separate therefrom. The county was a party to this agreement, and it had no interest in the lands conveyed. By reference to the records introduced in evidence it will be seen that this agreement was authorized by the City Council after a vote of the electors of Omaha, and by the Board of County Commissioners after a like vote of the electors of said County. It recites:

Tripartite agreement not upon condition subsequent.

> "Whereas, the parties hereunto desire to arrange for the more perfect connection of any railroads that are or shall be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska."

It then recites that in consideration of the premises, and the receipt by the railroad company of the

bonds of the County of Douglas to the amount of $250,000, and in further consideration of the receipt by the railway company of a deed from the City of Omaha to certain real estate in said city known as "depot grounds," the railroad company for "itself and its successors, covenants and agrees to and with the County of Douglas and the City of Omaha as follows, to-wit."

Now, this is not the language of a condition. This is a covenant by the Union Pacific Railroad Company, and its successors and assigns, and the deed that was made by the City to the Railroad Company of the "depot grounds" imposed upon the Railroad Company the same covenants as this contract.

The resolution of the County Board authorizing the execution of the contract will be found on page 272, Record. The City also authorized the execution of the contract, and also provided for certain conditions in addition to the covenants in the contract. The resolution—Record, page 261—is as follows:

Tripartite agreement not upon condition subsequent.

> "that said deed shall contain said contract, or so much of the same as shall embody the *terms, conditions and restrictions therein contained, and a further clause that said lands so conveyed shall revert to said city in case they shall*

*not be occupied and improved in accordance with the terms as set forth in said deed, and that upon the execution of said deed he shall deliver the same to the Mayor, who shall deliver the same to the proper representative of the U. P. R. R. Co. upon receiving from said Company a contract properly executed to the City of Onaha and Douglas County in accordance with the copy presented by the Omaha Bridge Committee.*"

It is therefore seen that the contract is an entire, separate and distinct agreement from the deed, but however that may be, an examination of this deed will show that the conditions on which the property is to be forfeited are not for a failure to comply with the covenants of the contract, to-wit, to allow any other company to run its trains over the Union Pacific Company's bridge and tracks according to the terms of the tripartite agreement. The very resolution passed by the City Council shows that it was to contain these covenants, "and a further clause that said lands so conveyed shall revert to said city in case they shall not be occupied and improved in accordance with the terms set forth in said deed." The clause in the deed providing for the forfeiture is as follows—Bill of Complaint, page 29.

"and provided further, that in case said premises, or any part thereof, be abandoned or disused, or converted to any other than the uses and purposes hereinbefore limited then the same shall revert to and become the property of the said City of Omaha."

Now, the uses "hereinbefore limited" are stated just previous to the conditions, as follows:

"hereby limiting the use of all said premises to the legitimate purposes of depot and transfer grounds, and grounds for right of way and approaches to the said Missouri River bridge, subject to the conditions and restrictions contained in the contract above recited."

That is, the property is limited to the use of depot and transfer grounds, and right of way and approaches to the bridge, but is also subject to the conditions contained in the tripartite agreement. But it is not to be forfeited for the failure of the Union Pacific Company to conform to every agreement and covenant stated in the tripartite agreement.

Should the Union Pacific Railroad Company abandon any part of the property, or convert it to

any other use than that provided for in the deed, to-wit, depot and transfer grounds, and ground for right of way and approaches, the property so abandoned, or so converted to other uses, shall revert to the city; or, if the entire property is abandoned, or converted to other uses, it shall revert to the city. It could not have been the intention that if the Union Pacific Railroad Company failed or refused to allow any other railroad company to run its trains over the bridge, and use the depot and property as provided in the sixth subdivision, that thereupon the whole property should be forfeited to the city. A moment's consideration will show that this could not have been the intention of the parties. The Union Pacific Company constructed its depots upon this property as provided by the contract. It has made a contract with all the other railroad companies whereby for 999 years it agreed to allow them to run their trains over the bridge, and to use the depot, and property and tracks connected therewith, jointly with the Union Pacific Company. Now, then, because it fails to allow another company to do this, we do not think the city could come in and forfeit the entire property; this would be doing damage to innocent parties, and such radical action could not have been the intention of the parties to the con-

tract; but should the property be abandoned, or p
to other uses, then, of course, no innocent par
could be injured by its forfeiture to the city.

It is a rule of law, well established, that con
tions subsequent are not favored in the law, and a
construed strictly, for the reason that they tend
destroy the estate granted, and in many instanc
when rigorously exacted, work hardships to innoce
parties.

*Elyton Land Co. v. South & North Alaba*
*Ry. Co.*, 100 Ala. 396, 14 Southern, 207.
*Chapin v. Harris*, 90 Mass. 594.
*Post v. Weil*, 115 N. Y. 361.
1 Tiffany on Real Property, Sec. 68.
*Ayling v. Kramer*, 133 Mass. 12.

It is also settled that a conveyance to a railro
company of land upon such a condition as was a
tached to this deed will not be construed to be a co
dition subsequent upon which the land could be fo
feited, unless such forfeiture is clearly provided f
in the deed itself.

*Elyton Land Co. v. South & North Alaba*
*Ry. Co.*, 14 Southern, 207, and authoriti
therein cited.

But assuming that the city could bring a suit t
forfeit the land, it is no defense to an action by th

Mason City & Fort Dodge Railroad Company for the right to enforce this covenant in its favor. This has been established by the case of *Joy v. St. Louis,* and the other cases cited in this brief.

(b) **But even as to conditions subsequent, the remedy is not confined to a forfeiture.**

Remedy not confined to forfeiture.

But even if we should concede that the proviso contained in the Saunders deed is to be construed as a condition authorizing the city to forfeit the depot property for a failure to comply with all of the covenants contained in the tripartite agrement, forfeiture and re-entry for breach of condition is not the sole remedy. It is unquestionably true that there are in the books cases where deeds have been drawn upon conditions in such form as to contain no promise by the grantee, where the court has held that re-entry for condition broken is the grantor's sole remedy, such being the intention of the parties; but wherever premises are conveyed upon condition, and language is used that will also imply a promise, the grantor has two remedies—he may re-enter for condition broken, or he may apply to a court of equity to enforce the agreement by the grantee, which is implied by his acceptance of the conveyance. To compel the grantor in every case to apply the drastic

remedy of re-entry has been recognized as an i
venient and, in some instances, an unjust mo
adjusting the rights of the parties.

We have already had occasion to comment
the reluctance with which courts have construe
visos and stipulations in contracts and deeds so
give the grantor this strict legal right to enfo
forfeiture of the grantee's estate. Much the
sort of feeling has induced courts of equity to p
the grantor, even where he is perfectly justif
enforcing the forfeiture, to adopt the less bu
some, and often more equitable, course of enfo
by injunction, or otherwise, the carrying out
objects for which the condition was original
tended. The case at bar is an example of such
Not only would the enforcement of the forf
here be a great hardship upon other corpor
using the tracks and depots, but would not
adequate remedy for the people generally wh
receive the benefits of railway communicatio
competition. It would tend to destroy the
facilities rather than increase them, as was int
by the people in aiding the Union Pacific Con
This view of the law is well settled by the autho

*Stuyvesant v. Mayor, etc.*, of New Yo
Paige, 414.

*Livingston v. Stickels*, 8 Paige, 398.
*Palmer v. Plank Road*, 11 N. Y. 389.
*Spalding v. Hallingbrook*, 35 N. Y. 207.
*Aikin v. Albany, Vt. & Canada Ry.*, 26 Barb. 298.
*Close v. Burlington, C. R. & N. Ry.*, 19 N. W. 886.
*Warner v. Bennett*, 31 Ct. 478.
*Peck v. Conway*, 119 Mass. 546.
*Smith v. Jewett*, 40 N. H. 530.
*Birmingham v. Leasan*, 77 Maine, 494.
*Stevens v. Pillsbury*, 57 Vt. 205.
*Godfrey v. Black*, 17 Pacific (Kansas), 849.
*Smith's Leading Cases*, Vol. 1, Ninth Ed., 164 to 173, inc.

An examination of all of the authorities cited by the appellant will show that they are either cases simply holding that an estate conveyed upon condition subsequent does not re-vest simply on breach of condition, but requires re-entry; or they are cases like the one of *Close v. Burlington Road*, 64 Iowa, 149, where there was no agreement of the grantee to perform an act; (and we think this is the only case of the kind cited by counsel.) It is easily distinguishable from the case at bar. There was simply

a naked condition—no language that would imp
agreement by the grantee to do any act. The
said:

> "It is not to be denied, probably, t
> deed may contain a covenant on the pa
> the grantee, and be of such character
> create a personal obligation even thoug
> signed by the grantee."

Palmer v. Plank Road.

The court cites the case of *Palmer v.* *Road*, 11 N. Y. 389, to the effect that there may condition without a covenant, and where the guage imports a covenant the remedy of forf is not exclusive. Let us for a moment conside case:

In that case there was nothing but a cond there was no language which would import an ment by the lessee. The court, however, cited approval the case of *Livingston v. Stickels*, 11 and *Stuyvesant v. Mayor, etc., of New York*, by us in this brief, which laid down the rul where there is language importing an agreem well as a condition the party may have his re in equity to enforce it.

Stuyvesant v. Mayor, etc., of New York.

In *Stuyvesant v. Mayor, etc., of New Yor* *pra*, the opinion is by Chancellor Walworth.

was a conveyance to the city of property for a park upon conditions—one of them being that such lands should at all times, and forever thereafter, be appropriated, to be used for purposes of a public park, to be called Stuyvesant Square; another, that the corporation should "immediately proceed to regulate the grounds between Fifteenth and Seventeenth Streets, and extending 220 feet on each side of Second Avenue, and should enclose the lands on each side of the avenue," etc., and should plant and improve such enclosure. There was then a clause that if the city failed to perform any of these conditions the lands should revert. The court held that the agreements were sufficient to create a covenant as well as a condition, and that the grantor had an election of remedies. The court said:

> "Although the permitting of such a use of the premises involves a forfeiture of the grant in case the complainant thinks proper to enforce the forfeiture for this breach of the condition upon which the lands were granted, he is not bound to claim the forfeiture; but he may resort to his suit to compel a specific performance of this covenant."

Livingston v. Stickels.

We particularly call the court's attention to the case of *Livingston v. Stickels*, 8 Paige, 398—Opinion

also by Chancellor Walworth. In that case the Chancellor said:

> "The objection that the lease contains no covenant on the part of the lessee or his assigns to pay the tenth sale, so as to render them personally liable upon an alienation of the premises, with the consent of the lessor, does not appear to be well taken. If it were a mere condition, then it is evident the only remedy of the lessor would be by a proceeding against the purchaser, to recover the premises for a breach of the condition. But a clause of this kind may be so framed as to operate both as a condition and as a covenant; so as to give the lessor an election, either to proceed by an action of covenant, to recover damages for a breach thereof, or by an ejectment to enforce the forfeiture. No particular form of words is necessary to create a covenant. But any words will be effectual for that purpose which show that the party sought to be charged as a covenantor intended to agree to do, or to refrain from doing, something in which the other party had an interest. In *Harrington v. Wise*, Cro. Eliz. 486, where the agreement was, 'it is covenanted and agreed between the parties

that J. H. doth let the said lands for five years, provided, always, that the said W. shall pay to him annually during the term 120 pounds,' the court decided that this was a covenant for the payment of rent, as well as a condition. (See also *Doe v. Watt*, 8 Barn. & Cress. Rep. 316; Coventry's Read. ed. of Coke, 203.) Here, in addition to the clause of the lease which the appellant counsel cor[illegible]nds is a condition merely, the parties had inserted a previous covenant, on the part of the lessee and his assigns, well and faithfully to pay, fulfill, accomplish and perform not only the yearly rents thereinbefore mentioned and reserved, but also 'all and every, the several and respective payments, covenants, clauses, and conditions following,' &c., among which payments and conditions was this payment of the tenth sale upon every alienation. This is an express covenant, therefore, even if the subsequent clause, taken by itself, would have operated as a condition merely."

Peck v. Conway.

The Massachusetts Court, in *Peck v. Conway*, 119 Mass., p. 546, gave equitable relief in such a case. There the parties to the bill both derived title from one Ensign, who, in deeding the property held

by the defendants, had done so "with this expr
reservation, that no building is to be erected by
said Joseph B. (grantee), his heirs or assigns, u
the land herein conveyed." The Court held that
questionably Ensign, so long as he lived and
mained owner of the adjoining land, would be
titled to relief in equity to enforce the restricti
and the only question considered was whether
plaintiff, his grantee, was entitled to the same r
edy; the Court held that he was. The relief aske
the action was by way of injunction to restrain
defendants from building on the lot.

Smith v. Jewett.

In *Smith v. Jewett*, 40 N. H. 530, the Court
ting in equity expressly refused to decree a for
ture of an estate for breach of condition subsequ

Birmingham v. Leasan.

So also in *Birmingham v. Leasan*, 77 Maine,
it was held that equity would not lend its aid
divest an estate for breach of condition subsequ
and thereby enforce the forfeiture.

Both in the Maine and in the New Hampsh
case it is clearly intimated that the Court would
everything in its power to carry out the intentio
the parties with respect to the condition short of
forcing the forfeiture of the grantee's estate.

Stevens v. Pillsbury.

The case of *Stevens v. Pillsbury*, 57 Vt. 205,
clear authority for the position we have ta

There a bill in chancery was filed, praying a forfeiture of certain premises to the orator on account of the breach of a condition, and also "for such other and further relief in the premises as the nature and the circumstances of the case may require." It appeared that the orator had purchased from one Bliss certain hotel property. As an inducement to the purchase, the grantor agreed to close, and keep forever closed, his own hotel property, thereby insuring the purchaser against competition so far as the grantor was concerned. In order to render this agreement enforceable, Bliss, on the same day of the conveyance of the hotel property to the orator made a further conveyance of his remaining hotel property upon the following condition:

> "Yet the condition of this deed is such that if I, the said Ellis Bliss, my heirs, executors, administrators, and assigns do and shall hereafter keep and hold the above premises free and clear from all the purposes of a hotel, tavern, inn, or boarding-house; also, from all the purposes of livery or livery stabling, as well the buildings that are now erected thereon, as any and all which shall be erected thereon, so long as wood grows and water runs, truly and faithfully as to the said Harry

> B. Stevens, his heirs, executors, administra
> tors, and assigns, then and in that case, thi
> deed is to be null and void, otherwise in ful
> force and effect."

Bliss subsequently made transfers of the re
mainder of his property, and several of the subse
quent grantees broke the condition. The Court hel
that while there had been a breach of the conditio
so as to warrant a technical forfeiture of the prem
ises, equity would grant relief by way of compensa
tion rather than by way of forfeiture. The Cour
said:

> "Under these circumstances, inasmuch a
> the orator has come into a Court of Equity
> thereby offering to do equity, we think i
> would be inequitable not to relieve the owner
> of those portions of the Bliss hotel property
> who are innocent of any breach of the cond
> tion of the deed, from an entire loss of th
> improvements and enhanced value of the prop
> erty."

And the Court decided that equity would be don
to the orator as against the defendants by requirin
the payment to the former by the latter of a su
equivalent to what he had paid for the immunit
from competition, together with interest.

In *Godfrey v. Black*, 17 Pac. (Kan.) 849, it was flatly held that a lessor having a right to re-enter for condition broken, was not confined to this remedy. He might insist upon the observance of the covenants of the lease. The facts were that the petitioner was the owner of certain premises upon which he had erected a hotel. The hotel was leased to certain parties, with the usual covenant against subletting, and also on the condition that it was to be used only for hotel purposes. The petition set up that the lessees had sublet a portion of the hotel to one Godfrey, who intended to occupy the premises for the transaction of real estate business. The petition prayed an injunction against both the lessees and Godfrey, to prevent the subletting. A temporary injunction was granted, and to reverse that order appeal was taken to the Supreme Court. The Court said: Godfrey Black.

> "It is claimed that injunction is not the proper remedy in such case; and actions to recover possession and to recover damages for trespass, where the defendants could have the issues submitted to a jury, are suggested. The lessor is not confined to these remedies, nor are they adequate. He has a right to insist that the covenants of the lease shall be

observed, and that the premises shall be used only for the purposes agreed upon. It does not appear that the lease was to terminate upon a breach of the covenants; but, even if the lessor had a right to re-enter, that would not preclude him from obtaining equitable relief to prevent a forbidden use of the premises."

The Minnesota Court held in *Stees v. Kranz*, 32 Minn. 313, that under a lease containing a covenant that the lessee will not put the rented premises to a certain use, and providing for re-entry for breach of the covenant, the landlord is not restricted to his right of re-entry, but may proceed by injunction to restrain the breach of the covenant.

(c) **The city is not a necessary party to the suit of the Mason City and Fort Dodge Railroad Company to enforce the covenant in the tripartite contract.**

The defendant at the final hearing for the first time raised the question that there was a defect of parties to this action; that the City of Omaha was a necessary party to the enforcement of any rights under the Saunders deed and tripartite agreement. We submit that this objection is without merit. A moment's consideration of the covenants will show

that no relief is demanded, or can be demanded, against the City, and that the City is not in any way, as a corporation, interested in the subject-matter of the action or the decree.

It was held in the case of *Stuht v. City of Omaha*, Record, Vol. 1, page 242, that the legal title of this land was never in the City; that the inhabitants thereof bought it by bonds voted in 1869, and had it conveyed direct by the grantor to a trustee in trust, and by him conveyed to the railroad company; that the covenants were for the benefit of all of the inhabitants of Omaha and County of Douglas, that any reversion would enure to the inhabitants generally, and that the City had no authority to release this covenant to the railroad company. We take it that this position is self-evident upon an inspection of the document. The railroad company, in consideration of receiving $250,000 of bonds from the County, and certain real estate purchased with the proceeds of $200,000 bonds of the City, covenanted that any railroad company might have the right to run its trains over this property. This was a mere right of user. The railroad company does not part with the title of any property or the possession thereof.

*U. P. R. R. Co. v. C. R. I. & P. Ry. Co.*, 163 U. S. 582.

What decree could in this case be rendered against the City? What right of the City is directly affected by a decree in this case? A general public interest is not sufficient—it must have some direct property interest which would be necessarily taken away, or adjudicated upon to its prejudice by a decree in our favor, or against us, in this case. No such right is involved here. "Parties," said Mr. Justice Curtis in *Shields v. Barrow*, 17 Howard, page 130, "are divided into three classes:"

Shields v. Barrow.

"1. Formal parties.

"2. Persons having an interest in the controversy, and who ought to be made parties, in order that the Court may act on that rule which requires it to decide on and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. These persons are commonly termed necessary parties; but if their interests are separable from those of the parties before the Court, so that the Court can proceed to a decree, and do complete and final justice, without affecting other persons not before the Court, the latter are not indispensable parties.

"3. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience."

This definition has been accepted to the present day by all jurists and law writers as an accurate definition, applying to Courts of equity. The question in this case is not, therefore, whether we might properly have made the City a party, but whether a decree can be given in this case without prejudicing the rights of the City; in other words, is the City an indispensable party? If the City is an indispensable party, then the United States is an indispensable party, because Congress provided in the Act of 1871 that all railroad companies should have the right to use the bridge and its approaches and depots connected therewith, and the United States has the same interest in seeing the agreement performed as the City has. If the City is a necessary party, then the County is a necessary party, because it also donated bonds as a consideration for this covenant which we seek to enforce; but the fact is that the grant was for

the benefit of all of the people, it was a covenant for the benefit of any railroad company which should thereafter construct its lines to the Missouri River, and in the enforcement of that right no one but the Union Pacific Railroad Company, whose property is to be used, need be made a party—especially is this the case where no issue as to defect of parties was raised by the demurrer or answer. In such a case no question as to defect of parties can be raised except as to indispensable parties.

*Mechanics Bank v. Seton*, 1 Peters, 585.
*Segee v. Thomas*, 3 Blatchford, 11.
*Keller v. Ashford*, 133 U. S. 610.
1 Tiffany, Real Property, Sec. 68.

Mechanics Bank v. Seton.

In *Mechanics Bank v. Seton*, 1 Peters, page 299, one Adam Lynn had $3,000.00, par value, of the capital stock of the Mechanics Bank in his name, which was avowedly held by him for Louisa and Ann Maria Seton. The Bank refused to transfer the stock, claiming that Adam Lynn was indebted to it. No objection as to defect of parties was raised by demurrer or by answer, and the Supreme Court of the United States held that Lynn was not an indispensable party, and therefore the objection could not be raised on final hearing. The Court said:

"The second objection, that Adam Lynn ought to have been made a defendant, would seem to grow out of a misapprehension of the object of this bill, and the specific relief sought by it.

It ought to be observed here, preliminarily as a matter of practice, that although an objection for want of proper parties may be taken at the hearing, yet the objection ought not to prevail upon the final hearing on appeal, except in very strong cases, and when the Court perceives that a necessary and indispensable party is wanting.

The objection should be taken at an earlier stage in the proceedings, by which great delay and expense would be avoided.

The general rule, as to parties, undoubtedly is that, when a bill is brought for relief, all persons materially interested in the subject of the suit ought to be made parties, either as plaintiffs or defendants, in order to prevent a multiplicity of suits and that there may be a complete and final decree between all parties interested. But this is a rule established for the convenient administration of justice, and is subject to many exceptions; and is, more or

less, a matter of discretion in the Court; and ought to be restricted to parties whose interest is involved in the issue, and to be affected by the decree. The relief granted will always be so modified as not to affect the interest of others; 2 Mad. Ch. 180; 1 Johns. Ch. 350.

Where was the necessity or even propriety of making Lynn a party? No relief is sought against him. The bill expressly alleges that he was perfectly willing to make the transfer; but permission was refused by the bank. There is no allegation in the bill upon which a decree could be made against Lynn; and it is a well-settled rule, that no one need be made a party, against whom, if brought to a hearing, the plaintiff can have no decree. 2 Mad. Ch. 184; 3 P. Wil. 310, N. 1."

This case was cited and approved in *Keller v. Ashford*, supra, in which a bill was filed by a mortgagee against the grantee of the mortgagor assuming the mortgage to enforce the covenant. The court held, by Mr. Justice Gray, that the mortgagor was not a necessary party, citing *Bank v. Seton*, 1 Peters, 299.

There have been many cases before the courts for the enforcement of such covenants, and in no case

xcept the Joy case has the City, or the party procur-
ng the covenant by the railroad company, been made
party.

*South & N. A. R. Co. v. Highland Ave. & B. R. Co.*, 23 Southern, 973.

*Union Depot Co. v. Southern Ry. Co.*, 16 S. W. 920.

*Chicago, St. P. & K. C. Ry. v. Kansas City, St. J. & C. B. Ry.*, 52 Fed. 178.

Same case, 38 Fed. 58.

*Canada Southern Ry. Co. v. International Bridge Co.*, 8 Fed. 190.

Canada So. Ry. v. International Bridge Co.

In the case of the *Canada Southern Railway Co. International Bridge Co.*, 8 Federal, Judge Wal-
ce enforced a covenant against the International
ridge Company somewhat similar to the case at bar.

In the Chicago, St. Paul & Kansas City case,
Fed. 178, the City granted the right to the Bur-
gton Road to lay its tracks in certain streets, upon
e condition that any other railroad company should
ve the right to run their cars, locomotives and
ins over and upon the same. The City was not
de a party in this case.

South. & N. A. R. Co. v. Highland Ave. & B. R. Co.

In *South & N. A. R. Co. v. Highland Ave. & B. R.*
, 23 Southern, 973, a provision in a deed by a land
npany of a right of way provided "that any other

railroad company running into or through the city of Birmingham shall have the right to run a parallel track upon and along the same right of way." A suit was brought against the Railroad Company, but the City was not made a party. In considering a motion to dismiss the appeal for want of equity the Court stated that "the attention must be directed wholly and exclusively to the equities of the bill, not to its frame, or the want or misjoinder of parties, or other matters which, if a demurrer were interposed, would be regarded as waived, if not specially assigned." The attention of the Court was thus called to the question of parties, and if the city was an indispensable party to the enforcement of this right, it could not be waived by failure to demur or raise the question by answer. The case is therefore a strong authority for the position that the City was not an indispensable or even a necessary party. In discussing the nature of the right to be enforced, the Court said:

> "In the case of *Elyton Land Co. v. South & N. A. R. Co.*, 100 Ala. 396, 14 South. 207, we had occasion to construe this same deed, for the single purpose of determining whether the proviso contained therein was technically a condition, the breach of which, by the gran-

tee's refusal to allow another railroad to build a parallel track on the right of way, would cause a forfeiture, and authorize the grantor to recover possession. We there decided that it was not a condition, but a covenant or limitation. Whether it be construed as a covenant or as a limitation is immaterial. Its effect upon the rights and obligations of the parties thereto is the same. It operated to create, in favor of such other railroads as might seek in the future to run into or into and through the City of Birmingham, an equitable easement in, or right to build a parallel track upon and along, the right of way granted to appellant; and by its acceptance of the deed, appellant became bound to comply with its stipulations. *Joy v. St. Louis*, 138 U. S. 1, 11 Sup. Ct. 243, and 45 Am. & Eng. R. Cas. 655; *Chicago, St. P. & K. C. Ry. Co. v. Kansas City, St. J. & C. B. R. Co.*, 52 Fed. 179; *Whitney v. Railroad Co.*, 11 Gray 359.

"That a Court of Equity has jurisdiction, at the instance of a beneficiary under such a covenant, to enforce the specific performance of the covenant, by declaring such beneficiary entitled to the use of the right of way, and

enjoining any interference with the exercise of the right to use it, even though such beneficiary be not specifically named in the agreement, and was not in existence at the time it was made, we regard as settled by the first two cases above cited."

It is unnecessary to cite other cases.

In the Joy case, there was a public park, through which no railroad company had a right to run without the consent of the city; it was proper, therefore, that the city should be a party to the proceeding, but the Court did not decide that the City was an indispensable party. The City simply intervened, and asked to have the covenant enforced. But in the Kansas City case Judge Brewer and Judge Phillips enforced the covenants without the city being a party. The case went to the Supreme Court of the United States on a motion to stay the decree, on the ground that a supersedeas bond had been given. The motion was refused, and it is fair to assume that, if the city had been an indispensable party, Judge Brewer would have so held. In no other case that we know of for the enforcement of such a right as this, has the City or County ever been made a party.

(d) **The remedy is not confined to a party to the original contract, from whom the consideration moved, but the contract may be enforced by any railway company having a right to use the tracks under the terms of the agreement, to-wit: "All railroads now or hereafter running into or out of Omaha and Council Bluffs."**

Remedy not confined to party to original contract.

3 Pomeroy's Equity Jurisprudence, Section 1295.

*Joy v. St. Louis*, 138 U. S. 1.

*South & N. A. R. Co. v. Highland Ave. & B. R. Co.*, (Alabama), 23 Southern, 973.

*Gilbert v. Peteler*, 38 N. Y. 168.

*Keller v. Ashford*, 133 U. S. 610.

*Southern Kansas Ry. Co. v. Oklahoma City*, 69 Pacific, 1050.

*Austin v. Seligman*, 18 Fed. 520.

*C. St. P. & K. C. Ry. Co. v. K. C., St. Joe & C. B. Ry. Co.*, 52 Fed. 178; 38 Fed. 58.

*Gibson v. Porter*, 15 S. W. 871.

*Feizel v. First German Soc. M. E. Church*, 9 Kansas, 402.

*Baptist Church v. Presbyterian Church*, 18 B. Monroe, 635.

*Cady v. Conger*, 19 N. Y. 256.

The ancient common law doctrine that no one but a party to the contract from whom the consideration moved could sue upon it has given place to a less technical, more reasonable and liberal rule in most jurisdictions; but, however that may be in actions at law upon such covenants, the doctrine never applied to equity, and more especially to the enforcement of covenants in the nature of easements created in real property, and *a fortiori* in the case of easements created for the benefit of the public. As to these covenants, it has always been settled that anyone who became entitled to enforce them could do so by an action in equity irrespective of whether he was a party to the contract or not. We have in our main brief we believe demonstrated beyond question that the covenant in the Act of Congress, accepted by the Union Pacific Company, and in the tripartite agreement in the Saunders deed, created an equitable easement in the property of the Union Pacific Railroad Company for the benefit of the public, to be availed of by any railroad company which should at any time bring itself within the description contained in these instruments.

Again calling the Court's attention to this phase of the case, it was thoroughly argued and disposed of in the Joy case. In that case we have been favored

with copies of briefs of counsel and the Record in the Supreme Court of the United States. It was there argued by Mr. Wells H. Blodgett with great force that in order for an equitable easement to be created, there must be two estates—a dominant and a servient estate, and that if property is conveyed in which a servient estate or easement, is created, the easement is only co-extensive with the property so conveyed. To illustrate: In that case the Park Commissioners granted to the railroad company a right of way through the park, in consideration of which the railway company agreed that any other railway company might run its trains over its railway—not only through the park, but up to the Union Station, through the City of St. Louis; that included property which the company at that time did not own, and it was urged that this was not an equitable easement; that an equitable easement could only be created in the use of the property granted by the Commissioners, and that it inured to the benefit only of other property retained by the grantor, but the Court held to the contrary, and held that by accepting the conveyance from the Park Commissioners, and agreeing that any other company might use its right of way—not only through the park, but up to the station—it created thereby an equitable ease-

ment in all its property which any railway company might avail itself of in an action in equity.

Now, in the case at bar the Union Pacific Company, by accepting the Act of Congress, agreed that any other railway company might run its trains over the bridge and its approaches and use the depot and tracks connected therewith. This created an equitable easement for the benefit of any company which should thereafter construct its line to any point at or near Council Bluffs or Omaha. By the acceptance of the $250,000 of bonds from the County, and the deed of the property purchased with the $200,000 of the City bonds, the Union Pacific Company made a like agreement and the easement was not confined to the property conveyed by the Saunders deed; it covered whatever property was necessary to connect the roads thereafter to be constructed to a point at or near Council Bluffs and Omaha. This, therefore, being an equitable easement, it has by the authorities we have cited been settled beyond question that any railway company thereafter coming within the description of the Act, or of the Saunders deed, may avail itself of that equitable easement, and may enforce it in an action against the Union Pacific Railroad Company, or any company taking the property with notice of the easement. This also was settled

in the Joy case. It was urged by Mr. Blodgett in his brief (page 72) that there was no privity of contract, or mutuality of equitable remedy. He said:

> "But as the Colorado Company was only to be admitted under such agreement as might thereafter be made between it and the owners of the railroad, and as no such agreement has been entered into, there now exists neither privity of contract nor mutuality of equitable remedy, and unless mutuality of remedy does exist between the parties no specific performance can be decreed."

But the Court held to the contrary. Although in that case the City was a party, the reason, and the only reason, why the City was a party, was that the new railroad company seeking to avail itself of this equitable easement would run through a public park, and by the act creating that park the City of St. Louis, as the successor to the Park Commission, was vested with the absolute control, the power to police and the duty of protecting it. This was held by Mr. Justice Blatchford in the opinion in that case, in which he said:

> "The City of St. Louis is in the present case not merely a nominal party, but is charged with the duty of protecting the park,

and of preserving and fostering the commerce of the City."

A reference to the Park Act will show this position; but the Court did hold that the covenants might be availed of by any railway company entitled to the privileges.

In the case at bar we do not occupy the position of a mere stranger or interloper in no way contemplated by the contract, for the reason that the Mason City & Fort Dodge Railroad Company is as much entitled to enforce this right as though it had been by name mentioned and the covenant made for its special benefit. The covenant in the Act of Congress is "any railroads that are or shall be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska," and the covenant in the Saunders deed is substantially the same. It can make no difference whether we come within the general definition or a specific definition. The rule is clearly laid down by Mr. Pomeroy (Volume 3, Second Edition, Pomeroy's Equity Jurisprudence) as follows:

> "Before describing the general effects of contracts, I shall notice some particular agreements which create special rights in equity where no such rights, or perhaps no rights at all, between the same parties, exist at law.

When the owner of land enters into a covenant concerning it, when in a deed the grantor or grantee covenants, or in a lease the lessor or lessee covenants, concerning the land, concerning its use, restricting certain specified uses, stipulating for certain specified uses, subjecting it to easements or servitudes, and the like, and the land is afterwards conveyed, or sold, or passes to one who has actual or constructive notice of the covenant, the grantee or purchaser will take the premises bound by the covenant, and will be compelled in equity either to specifically execute it, or will be restrained from violating it, at the suit of the original covenantee **or of any other person who has a sufficient equitable interest although perhaps without any legal interest, in such performance.* It makes no difference whatever, with respect to this equitable liability, and this right to enforce the covenant in equity, whether the covenant is or is not one which in law 'runs with the land.' "

C., St. P. & K. C. Ry. v. K. C., St. Joe & C. B. Ry.

In the case of the *Chicago, St. Paul & Kansas City Railway Company v. Kansas City, St. Joe & Council Bluffs Railway Company*, Mr. Justice Brewer and Judge Phillips, of the Western District of Mis-

*Italics are ours.

souri, enforced a similar covenant in favor of the Chicago, St. Paul & Kansas City Railway Company. To be sure, the discussion does not cover this point, but Mr. Justice Brewer stated in the opinion in that case that the whole subject had received careful consideration by him in the Joy case, and in that case the subject was carefully argued and considered—not only by Justice Brewer, but by the Supreme Court of the United States.

So. & N. A. R. Co. v. Highland Ave. B. R. Co.

A like rule was laid down in the case of *South & N. A. R. Co. v. Highland Avenue B. R. Co.*, the language of which is quoted at another place in this brief, but which is so pertinent that at the risk of tautology we quote it again in this connection:

> "In the case of *Elyton Land Co. v. South & N. A. R. Co.*, 100 Ala. 396, 14 South. 207, we had occasion to construe this same deed, for the single purpose of determining whether the proviso contained therein was technically a condition, the breach of which, by the grantee's refusal to allow another railroad to build a parallel track on the right of way, would cause a forfeiture, and authorize the grantor to recover possession. We there decided that it was not a condition, but a covenant or limitation. Whether it be construed as a cove-

nant or as a limitation is immaterial. Its effect upon the rights and obligations of the parties thereto is the same. **It operated to create, in favor of such other railroads as might seek in the future to run into, or into and through, the City of Birmingham, an equitable easement in, or right to build a parallel track upon and along, the right of way granted to appellant;* and by its acceptance of the deed appellant became bound to comply with its stipulations. *Joy v. St. Louis*, 138 U. S. 1; 11 Sup. Ct. 243, and 45 Am. & Eng. R. Cas. 655; *Chicago, St. P. & K. C. Ry. Co. v. Kansas City, St. Joe & C. B. R. Co.*, 52 Fed. 179; *Whitney v. Railway Co.*, 11 Gray, 359.

*"*That a Court of Equity has jurisdiction at the instance of a beneficiary, under such a covenant, to enforce the specific performance of the covenant, by declaring such beneficiary entitled to the use of the right of way, and enjoining any interference with the exercise of the right to use it, even though such beneficiary be not specifically named in the agreement, and was not in existence at the time it was made, we regard as settled by the first two cases above cited.*"

We refrain from further consideration of the authorities. It is perfectly apparent that the rule is

*Italics are ours.

established, and should not be departed from in thi
case. If the appellant's position is true—that no on
but the City can enforce this right—then we say th
County is equally interested, and no one but th
United States could enforce the easement created b
the Act of Congress. It would be cumbersome, in
deed, if a railway company, constructing a line t
Omaha, must await the slow processes by municipa
authorities, much less the Government, in order t
avail itself of this easement. The public would de
rive little benefit if the Government, the City and th
County must act before this right could be mad
effective. But what can the City do? It exhauste
its power as soon as the contract with the Unio
Pacific Railroad Company was finally consummated
it cannot change that contract; it cannot grant th
Mason City & Fort Dodge Railroad Company an
rights in this property which have not already bee
granted; it is powerless to convey any interest in th
depot property, or the bridge, or the railway. Th
same may be said of the County. A legal rule whic
would prevent the Mason City & Fort Dodge Rai
road Company from availing itself of this right ex
cept through the cumbersome proceedings of munici
palities and the Government is a rule technical an
devoid of equity.

## III.

**The covenants and conditions in the Union Pacific Bridge Act of 1871, and the Act of 1866, and the tripartite agreement contained in the Saunders deed, are binding upon this defendant.**

The language of the Acts of Congress is clear, distinct and decisive in subjecting the present Company to the duties, obligations, conditions and burdens which they imposed on the original Company.

Section 15 of the Act of 1862 provides that "wherever the word Company is used in this act it shall be construed to embrace the words their associates, successors and assigns, the same as if the words had been properly added thereto." If effect were given to this clause and the words successors and assigns read into the act after the word Company wherever it occurs, the impression would be irresistible that it was the purpose of Congress to extend the grant of all the rights, privileges, franchises, and property conferred upon the original Company to any other Company succeeding it, and to impose upon the latter all of the duties, obligations and bur-

dens resting on the former. There was good reason for treating a succeeding Company the same as the original Company, for Congress had in view in this elaborate Act, not the Company named in it but the great public advantages which would result from the construction and operation of this continental road. It is a very narrow view of the case to confine its provisions to the Company as if its interests were the end sought to be accomplished instead of the advancement in a critical exigency of the country of vital and transcendent service.

A single illustration will bring this vividly into view. Section 9 provides that the Leavenworth, Pawnee & Western Railroad Company of Kansas was authorized to construct a railroad and telegraph line from the Missouri River at the mouth of the Kansas River on the south side thereof, so as to connect with the Pacific Railroad of Missouri to the aforesaid point on the one hundredth meridian of longitude west from Greenwich, upon the same terms and conditions in all respects as are provided in this Act for the construction of the railroad and telegraph from the said meridian west; that is to say, the Leavenworth Company was to have large subsidies of lands and bonds and was to build a road of a certain character within a certain time and operate

as required by the Act. If this were all, a grantee f that Company would not, as against the United tates, be entitled to the subsidies of lands and onds, even if it built and operated the road in strict ompliance with the requirements of the Act. The eavenworth Company could not transfer to another s rights, privileges and franchises unless it could how congressional authority for doing so. But if ne 9th section read that the Leavenworth Company, s associates, successors and assigns, are authorized o construct a railroad, etc., etc., and that Company ith proper authority from the State has transferred s rights, privileges, franchises and property to nother Company, that Company would be within ne words of the grant, and, upon performance of its onditions, stand in the shoes of its grantor and be ntitled to all that it took under the Act. That is recisely what we have under the general provision f the clause of section 15 above quoted.

And this is equally true in respect of the duties, bligations, burdens and conditions imposed by the ct upon the Leavenworth Company; by the terms f the act all those duties, obligations, burdens and onditions would devolve and be binding upon its rantee as fully and imperatively as upon itself. hat has been said of the Leavenworth Company

is equally true of all the other Companies which formed the Pacific system.

Now we are ready to take another step forward. Section 18 provides that "and the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may at any time, having due regard to the rights of said Companies, add to, alter, amend or repeal this act." In the exercise of the power of amendment thus reserved, Congress passed the Act of 1864. The Act of 1864, Sec. 22, contained a like clause. These two Acts are to be read together as one. In the case of the *Union Pacific Railroad Company v. Hall*, 91 U. S. 343, 350, Mr. Justice Strong said:

> "But the amendatory Act of 1864 is not to be overlooked. It is to be regarded in connection with the Act of 1862, and interpreted as a part of it."

In that case the Court held that the power to build a bridge over the Missouri River was granted in the Act of 1862, and that no express grant to do

was needed. But this grant was distinctly ex-
ssed and defined in the 9th Section of the Act of
4, which provided "that, to enable any one of said
porations to make convenient and necessary con-
ions with other roads, it is hereby authorized to
blish and maintain all necessary ferries upon and
ss the Missouri River and other rivers which its
may pass in its course; and authority is hereby
n said corporation to construct bridges over said
ouri River and all other rivers for the conven-
of said road."

n this connection two facts are to be noted.
s that the clause of Section 15 of the Act of
above quoted, applies to the Union Pacific Com-
and is to be read thus:—Authority is hereby
the Union Pacific Company, its associates, suc-
and assigns, to construct a bridge over the
ri River at Council Bluffs. And this for the
reason that the two Acts are to be read to-
as one.

cordingly the clause of the fifteenth section of
act already quoted requires us to insert after
l "corporation" in the 9th section of the Act
the words "its associates, successors and as-

The other fact to be noted in this connection is that the bridge here in question built by the Union Pacific is a part of its road, and must be operated as such, as was distinctly held in the case of *Union Pacific Co. v. Hall*, supra.

We pass now to the Act of 1871. This Act is an amendment of those of 1862 and 1864. True, it is not entitled "An Act to amend" those acts or either of them, nor in the body of it is it declared to be so, but such is its character. In determining whether an act is amendatory of another, the terms and objects of the two must be considered. If the earlier discloses on its face a definite purpose and policy and the later advances that purpose and amplifies that policy, they must be read together; the first being the principal and the second the amendatory act, no matter whether the latter is declared to be amendatory or not. The Court, in determining whether it is of that character, will look to its purpose and effect. If it is entitled an amendatory act, or in the body of it is stated to be such, there can be no difficulty; and if it appears on its face to be of that nature, although not expressly stated, the same is true. It is very easy to see that the Act of 1871 is within this principle.

Turning to Section 9 of the Act of 1864, in order o ascertain the powers granted to the Company, and he purpose for which they are granted, we find the erms in substance as follows: To enable any one of aid corporations to make convenient and necessary onnections with other roads, authority is hereby ven to it to construct a bridge over the Missouri iver, at Council Bluffs and Omaha. Here is (1) the ant of the power to build a bridge; and (2) the rea- n for doing so, that is, to make connection with ner roads. That connections of roads in Missouri d Iowa, with those authorized in the Acts of 1862 d 1864, were in the contemplation of Congress ap- rs from their definite and explicit terms. Sec- n 9 of the Act of 1862 authorizes the Leavenworth npany to build its road from the Missouri "so as connect with the Pacific Railroad of Missouri," ch ran from St. Louis to Kansas City, and in the e section that that Company's road through sas is required to be so located that the several oads through Missouri and Iowa may connect the Leavenworth road, and make connections in the limits prescribed in the act.

Again, in the 14th Section of the Act, the Union ic is required to build a road from Sioux City to nection with its other lines when a road is built

through Minnesota or Iowa to that place. Still further, Section 15 provides that any railroad company then or thereafter incorporated shall have the right to connect its road with any of those mentioned therein at such point or points, and on such just and equitable terms as the President of the United States may prescribe.

And in Section 18 of the Act of 1864, the Burlington & Missouri River Railroad Company is authorized to extend its road in Iowa into Nebraska, to a connection with the main trunk or with the Iowa branch. These clauses are of the utmost significance, and the purpose of inserting them in the acts is so obvious that nothing is left to inference. That purpose was by the connection of the Iowa and Missouri roads with the Union Pacific to establish through lines from the East to the West.

It was a great and splendid policy at that time, unexampled in railroad construction the world over. In these days of railroad consolidation, when the purpose of these acts in connecting the roads east of the river with those west of it has become a familiar and every-day object of railroad management, it is difficult to appreciate the foresight and wisdom of the statesmen who framed these acts; but if we can realize the conditions and prevalent ideas of those

times, we cannot help being impressed with the grandeur of the conception of a system of transportation extending from state to state, and from the Atlantic to the Pacific.

The Act of 1871 has a large place in the process of the development of the scheme of the Pacific System. Its object is stated at the very beginning of its provisions. That object is "the more perfect connection of any railroads that are, or shall be, constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska." In the Act of 1864, we have a grant of power to bridge the river made to connect the roads east and west of it, and then we have the Act of 1871, intended to advance this object by a more perfect connection of these and other roads. The relation to one another of the three acts is very apparent; that of 1864 authorizing the bridging of the river, "to enable any one of said corporations to make convenient and necessary connections with other roads," and the Act of 1871 providing means with which the Union Pacific should build the bridge for the more perfect connection of all roads running from the east with those running from the west to the river at or near Council Bluffs and Omaha. Considering the purpose of that Act in connection with the grant of power to build the bridge,

it is very obvious that it must be taken as an amendment of the earlier acts, and therefore they are to be read together as one. It results that the clause in the Act of 1862 requiring the insertion of the words "its associates, successors and assigns," after the word "Company" wherever it occurs, applies to the provisions of the Act of 1871, so that it will read thus: "The Union Pacific Railroad, *its associates, successors and assigns*, be and are hereby authorized to issue its bonds and to secure the same by mortgage," * * "and for the use and protection of said bridge and property the Union Pacific Railroad Company, *its associates, successors and assigns*, shall be empowered, governed and limited by the provisions of the Act" of 1866, which, "for the more perfect connection of any railroads that are or shall be constructed to said river, at or opposite said point," that is, Council Bluffs and Omaha, provides that "trains of all roads terminating at said river shall be allowed to cross said bridge for reasonable compensation."

Thus read, the Act of 1871 extends to the present Company, as the successor of the Union Pacific, all of the burdens, obligations and duties imposed upon the first Company just as effectively as if they were named in the Act. It was under the powers granted

the Act of 1871 that the successor Company (Second Pacific Company) made the renewal bridge mortgage of 1885.

But there is another conclusive reason why the Act of 1871 was an amendment to the Act of 1862, and therefore they must be read together. Section 5 of the Act of 1862 provided that the government lien of $16,000 per mile for subsidy bonds should be the first lien upon the road.

Act of 1871 an Amendment to Pacific Railroad Acts.

Section 10 of the Act of 1864 permitted the Union Pacific Railroad Company to issue its first mortgage bonds to an amount not exceeding the government bonds, i. e., $16,000 a mile. As the law stood in 1871 the Union Pacific Railway Company was without money to build the bridge, and could only obtain $16,000 of first mortgage, and $16,000 of government subsidy bonds. The Act of 1871 in effect amended this law, and permitted the Union Pacific to make a first mortgage upon the bridge, its approaches, and the depots and tracks connected therewith, which amounted to two and a half million dollars.

While the act does not in so many words say that the Union Pacific is authorized to make a first mortgage upon the bridge, Judge Sanborn held in the receivership proceedings that such was its effect. Record, Vol. 1, page 351.

It is a general rule that where a subsequent act necessarily modifies or changes a prior act, it is to be construed as an amendment, whether so designated in the act or not.

*Smails v. White*, 4 Neb. 357.
*Sovereign v. State*, 7 Neb. 409.
*In re McKeon's Estate*, 58 N. Y. Sup., p. 589.
*Fussell v. Gregg*, 113 U. S. 550.
*United States v. Freeman*, 3 Howard, 548.
*Atkins v. Disintegrating Co.*, 18 Wall. 301.
*State v. Gerhardt*, 33 L. R. A., 313, 322 (Ind.)

Policy of Congress to make Bridge Acts binding on successor companies.

We now pass to considerations of another character. It seems to us hardly conceivable that it should be claimed that Congress intended by the Act of 1871 to accomplish the great purpose of making connections across this bridge and its approaches between the eastern and western lines, and simply made the covenant binding upon the First Pacific Company, knowing that its property was then mortgaged under the Act of 1862 and 1864, and that the mortgage might be foreclosed and the property sold out and this object defeated at any time. Not only that, but the very Act of 1871 which created the right authorized a mortgage upon the bridge, its approaches, tracks and depots connected therewith. Was it the intention of Congress by the very act

creating this public right to also furnish the means of destroying it? Was it intended to be a personal covenant of the First Pacific Company which might be cut off by the foreclosure of a mortgage within a year? Can it be supposed for one moment that Congress in these various Pacific acts and other acts extending the policy to all roads in the country crossing state lines should establish, develop and emphasize this policy on the one hand, and on the other, in the very same acts, provide that the company could execute a mortgage which could be foreclosed upon a default happening, and the property be sold and the purchaser be relieved from the obligations and duties imposed upon the original company? The power that created this easement, according to our adversaries, provided at the same time for its destruction.

What becomes of the great object of Congress in connecting the lines of road which then were or might thereafter be constructed to opposite banks of the Missouri River? Was it a policy of a day, to be destroyed by change of ownership of the line of road or the insolvency of the original corporation? A more careful consideration of the Act of 1871 and the other bridge acts will show that it was the intention of Congress to create an easement in the property for the benefit of any road coming within

the description of the Act that should thereafter desire to run its trains over the bridge, its approaches and the tracks connected therewith.

The Act of 1871 must be read as though the provision of the Act of 1866 had been incorporated in it. And the language of that act, after providing for the construction of the bridge, is as follows:

> "for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that, when constructed, all trains of all roads terminating at said river at or opposite said point, shall be allowed to cross said bridge for reasonable compensation to be made to the owners of said bridge," etc.

It will be here noted that this is for the more perfect connection of roads to be thereafter constructed, and that this language runs (if we may be allowed to use the expression) against the bridge. It is an obligation for an easement imposed upon the property, not upon the corporate entity.

Could it be claimed with any degree of reason that the bridge built under Section 1 of the Act of 1866 was subject to the use by other companies simply so long as it should remain in the hands of the

original persons or corporation constructing it, or that all the other bridges authorized by the eight different sections were simply obligated during the time they should remain the property of the original incorporation or persons authorized to construct them? What was meant by the Act of 1871 was that the bridge, approaches, depots and tracks connected therewith necessary to be used for the purpose of making connections between the eastern and western lines should be governed by the Act of 1866 as to the use by other roads.

It was also provided in the act that Congress should at all times have power to regulate the bridge, and the rates for transportation of freight over the same, and the local travel therein provided for. How could Congress regulate the bridge if the provisions of this act would not apply to a purchaser under a foreclosure?

Strong light is thrown upon the intention of Congress by an examination of the other bridge acts authorizing the construction of bridges across navigable streams and providing for their use by other companies. We have examined with care a large number of these acts, and we have yet to find one that in its terms provides that these obligations as to use by other companies shall be binding upon the suc-

cessors in interest, grantees, assigns, or anyone else. A number of these acts are cited in the opinion of Judge Sanborn in the Rock Island bridge case, and in the same case in the opinion of Chief Justice Fuller in the Supreme Court of the United States. We refer the Court to Appendix "B" of this brief, wherein will be found a large number of said bridge acts extending over a period of more than fifty years, and they are all substantially in the same form. These numerous acts are not only strong evidence of the intention of Congress to make these bridges general highways, but they evince the further intention of Congress that they shall always remain so in whose ever hands they may come. Congress has carefully preserved the great waterways, and favors the public interests to have as few bridges as possible consistent with the railroad transportation of the country. It is not only a waste of money—which ultimately must be paid by the people—but an injury to the public for every railroad to construct a bridge. How better could Congress maintain these open highways than in providing in these acts that they should be subject to the use of other railway companies? It would certainly do violence to the intention of Congress, evidenced by these Acts, if this right to have these bridges preserved as highways might be taken

away by the foreclosure of a mortgage, or the sale or lease of the property. We suggest that the consequences which would follow upon a decision that these obligations imposed by Congress as to the use of this bridge were mere personal covenants, and not binding upon the successors or grantees of the first company, would be most serious.

While we recognize the fact that if the Court is convinced beyond doubt that a proposition of law is correct it should so declare without reference to the consequences, yet, where the question may be considered doubtful, the grave consequences that might follow such a decision are entitled to the greatest weight.

Consider for a moment the consequences which would follow a decision that these obligations as to the use are only binding upon the original party constructing the bridge under the Acts of Congress. Nearly every bridge of importance constructed in the United States across the great waterways has passed from its original owner to grantees or lessees, either by foreclosure of mortgage or by voluntary transfer. Most of them are to-day used as common highways by other railways than the owners. Commerce between states has been largely facilitated by the construction of these bridges and the imposition of these

obligations as to their use. If the contention of counsel for appellant is true, all that Congress has done heretofore, all that the railroad companies have conceded under these acts, and all that is being done to-day, falls to the ground, and the grantee or lessee of any one of these bridges may immediately close this avenue of commerce to any railroad company using the same or desiring to use the same, unless such company is entitled to the use under a valid contract.

Over and over again have the courts of this country announced the salutary rule that commerce should be fostered rather than hindered. It has been the policy of Congress, it has been the policy of the courts, and certainly there is no reason why this policy should be reversed in this case.

Railroad companies should be held to a strict account in carrying out their obligations to facilitate commerce.

The language of Mr. Justice Brewer, quoted in the *Rock Island* case, on page 604, is peculiarly significant when applied to the question at bar.

> "It is to the higher interest of all, corporations and public alike, that it be understood that there is a binding force in all contract obligations, that no change of interest or change of management can disturb their sanc-

tity or break their force; but that the law which gives to corporations their rights, their capacities for large accumulations, and all their facilities, is potent to hold them to all their obligations and so make right and justice the measure of all corporate as well as individual action."

But again, passing to a consideration of the tripartite agreement, we find that that agreement was made expressly binding upon the Union Pacific Railroad Company, its successors and assigns. It was also included in the body of a deed forming a link in the chain of title of the Union Pacific Company. Any company that thereafter took said property and enjoyed its use became obligated by these covenants. It is not possible that the present Pacific Company could take the benefits of the $200,000 donated by the city to purchase the depot grounds, could use that property, and at the same time escape the obligations imposed upon its predecessor by the covenants of this agreement.

But these principles have been so thoroughly settled by the authorities, which we will now consider, as to no longer be open to serious controversy.

orities.

*Joy v. St. Louis*, 138 U. S. 1.

*Whitney v. Union Ry. Co.*, 11 Gray, 359.

*Union Pacific Ry. Co. v. McAlpine*, 129 U. S. 306.

*Parker v. Nightingale*, 6 Allen, 341.

*Lake Erie & Western Ry. Co. v. Priest*, 131 Ind. 413; 31 N. E. 77.

*Midland Ry. Co. v. Fisher*, 125 Ind. 19; 24 N. E. 756.

*Bronson v. Coffin*, 108 Mass. 175.

*Kirkpatrick v. Peshine*, 24 N. J. Eq. 206.

2 Pom. Eq. Juris., Secs. 689 and 1295.

*Talmadge v. East Riv. Bank*, 26 N. Y. 105.

*Opinion of Atty. Genl. Griggs*, 22 Opinions Attys. Genl. 398.

*Commonwealth v. Hancock Free Bridge Co.*, 2 Gray, 58.

*South & North Ala. Ry. v. Highland Belt Ry.*, 23 So. (Ala.) 973.

*Wade v. Chicago, Springfield, Etc. R. R.*, 149 U. S. 327.

*Union Depot Co. v. Southern Ry. Co.*, 105 Mo. 602; 16 S. W. 920.

*State v. Central Iowa Ry.*, 71 Ia. 410; 32 N. W. 409.

*Kettle River R. R. Co. v. Eastern Ry. Co.*, 41 Minn. 461.

*Tulk v. Moxhay*, 2 Phillips, 774.

*Luker v. Dennis*, 7 Ch. Div. 227.

*Chicago, St. P. & Kansas City Ry. v. Kansas City, St. Joseph & Council Bluffs Ry. Co.*, 38 Fed. 58.

Same case, 52 Fed. 178.

*Chicago, Milwaukee & St. Paul Ry. v. Chicago*, 183 Ill. 341.

Joy case.

In the case of *Joy v. St. Louis*, 138 U. S., page 1, only does the Court dispose of this question, but stantially all of the questions which can be raised his case against the enforcement of the right we and. In that case the railroad company, which herein designated as the "County Company," ined a deed of a right of way seventy feet in th across certain property which thereafter be- e a part of Forest Park in St. Louis. It also ac- ed certain detached lots between the Union ot and the Park. After the acquisition of this of way the legislature authorized the establish- of Forest Park. The County Company made tract with the Kansas City Company to sell it a of its right of way outside of the park, and pro- that the right of way through the park should common. This contract was not acknowledged

or put on record. It thereupon made a deed of the right of way, and also in the deed provided as follows, page 36:

> "And also the said party of the first part hath conveyed, assigned and transferred, and by these presents doth convey, assign and transfer, unto the said party of the second part and to its successors and assigns, an undivided one-half of all the right, title or interest of the party of the first part of, in or to the right of way, and of, in or to any and all other rights, privileges and franchises, powers and immunities, owned by or vested in, or enjoyed by, or that may hereafter be acquired and owned by, vested in, or enjoyed by, the party of the first part, in, through or upon Forest Park, by any means or from any source whatever; all of which conveyances of the said rights of way in this deed mentioned are made subject to the terms and conditions upon which the same were granted to the party of the first part."

This deed was recorded August 13, 1875.

We now come to the agreement which was sought to be enforced by the Colorado Company. It was made on the same day the contract was made between the County Company and the Kansas City

Company, and on the same day the foregoing deed was made, to-wit, August 11, 1875. The Board of Park Commissioners were the parties of the first part, the County Company party of the second part, and the Kansas City Company party of the third part. There are various stipulations in this instrument unnecessary to recite, but among other things it was agreed that the County Company should reduce the right of way from seventy to forty-two feet, and various stipulations made as to the manner of constructing the road through the park. The ninth subdivision is the one in question, and is as follows, page 31:

> "*Ninth. Said party of the second part shall permit, under such reasonable regulations and terms as may be agreed upon, other railroads to use its right of way through the park, and up to the terminus of its road in the city of St. Louis, upon such terms and for such fair and equitable compensation to be paid to it therefor as may be agreed upon by such Companies.*"

The party of the second part agreeing to allow ny other Company to use this right of way was the ounty Company. Now, it will be noted that the ounty Company did not own all of the right of way o to the depot, but only detached lots. It was

agreed in the first contract, between the County Company and the Kansas City Company, that the County Company should pay a certain sum to the Kansas City Company, and upon failure so to do should forfeit to the Kansas City Company its right of way, franchises, etc. It failed to make the payments, and the Kansas City Company acquired all of the right of way through the park and the detached portions up to the Union Depot, together with all the rights under this tripartite agreement, so that the Kansas City Company took the place of the County Company. Subsequently the Kansas City Company was consolidated with the Wabash Company under the name of the Wabash, St. Louis & Pacific Railway Company. It made a mortgage on all its property to certain trustees; these trustees brought suit to foreclose the mortgage, a receiver was appointed, and the property was sold to Joy, Hubbard, Wells and Ashley, a purchasing committee. Thereupon the Colorado Company filed its petition in the United States Court, asking to have this clause under the ninth subdivision in the tripartite agreement enforced in its favor, and a mandatory injunction issued commanding the owners of the railroad to allow it to run its trains through said park, and over the right of way owned by the Wabash Company to the

Union Depot. The Circuit Court enforced the stipulation. An examination of various assignments of error which are stated in the argument by Mr. Wells H. Blodgett will show that Joy and the other purchasers of the railroad claimed that the contract was not binding upon Joy and his associates, they being purchasers in good faith, and without notice of the stipulation in the tripartite agreement (page 26). It was also claimed that there was no mutuality in the agreement; that it was too indefinite to be enforced; that it did not create an equitable easement; that the County Company (the one that contracted to allow any other railroad company to use the right of way) only owned the right of way through the park, and did not own the right of way from the park to the Union Depot, but that this belonged to the Kansas City Company, and therefore it could not be included. We shall not attempt to state all of the objections in this brief statement of the case. The case is a leading one, and the opinion was by Mr. Justice Blatchford, and was the unanimous opinion of the Court. The Court held that the contract applied to the entire right of way from the park to the Union Depot. As to it being binding upon the Kansas City Company, the Wabash Company, and the purchasers under the Wabash mortgage, the Court held that

although the contracts were not of record, that the deed from the County Company to the Kansas City Company was of record, and that it sufficiently referred to the right of way through the park to place any purchaser upon inquiry, and that the terms and conditions of this tripartite agreement bound the purchasing committee whether it was a covenant running with the land or not. The Court also held that it created an easement which might be enforced in favor of any company; that contracts of such a character should be liberally construed in favor of the public when the subject-matter concerns the public; that the Kansas City Company was the successor of the County Company, and that the agreement attached to and bound the entire right of way, not only through the park, but to the Union Depot. The entire opinion is instructive, but we shall only quote some portions of it in this brief. The Court said, page 34:

> "We are also of opinion that the covenants in paragraph 9 of the tripartite agreement, as to the use of the right of way by other railroad companies, are binding upon subsequent purchasers, with notice, from the Kansas City Company. *Tulk v. Moxhay*, 2 Phillips, 774; *Luker v. Dennis*, 7 Ch. D. 227; *Bron-*

*son v. Coffin*, 108 Mass. 175; *Whitney v. Union Ry. Co.*, 11 Gray, 359, 364; *Parker v. Nightingale*, 6 Allen, 341, 344; *Vandoran v. Robinson*, 16 N. J. Eq. 256; *Kirkpatrick v. Peshine*, 24 N. J. Eq. 206; *Western v. Macdermott*, L. R. 2 Ch. 72; *Watertown v. White*, 4 Paige, 510; *Randall v. Latham*, 36 Ct. 48, 53; *City of Cincinnati v. Lessees of White*, 6 Pet. 431; *Brew v. Van Deman*, 6 Heiskell, 433; *Winfield v. Henning*, 21 N. J. Eq. 188; *Verplanck v. Wright*, 23 Wend. 506; *Stockett v. Howard*, 34 Md. 121; *Atlantic Dock Co. v. Leavitt*, 54 N. Y. 35.

"In the present case the tripartite agreement is a link in the chain of title of the mortgagees and of the purchasing committee. The right of way through the park, granted by Griswold to the County Company, November 3, 1871, was lost by non-user. The right of way granted by the Park Commissioners to the County Company under the First Park Act, of March 25, 1872, failed because the act was declared unconstitutional, in *Chouteau v. Leffingwell*, 54 Mo. 458. The third line, that established by the tripartite agreement, was not identical with either of the two prior lines.

The Park Commissioners, therefore, granted to the two companies, under the tripartite agreement, all the right of way which they acquired in the park. The right of the mortgagees and of the purchasing committee to use such right of way is based solely upon that agreement; and, holding under it, they must hold subject to its terms and conditions, irrespectively of the question of notice. *Whitney v. Union Railway Co.*, 11 Gray, 359; *Vandoran v. Robinson*, 16 N. J. Eq. 256; *Tulk v. Moxhay*, 2 Phillips, 774; *Luker v. Dennis*, 7 Ch. D. 227; *Western v. Macdermott*, L. R. 2 Ch. 72. Therefore, the Wabash Company, the mortgagees and the purchasing committee must be held to have had notice of the covenants and conditions of the tripartite agreement prior to the execution of the mortgage, and are bound by them, whether the covenants be or be not strictly such as run with the land."

Bearing upon this question of notice the Court held that the deed, being of record and referring to the tripartite agreement in the clause we have quoted in this brief, in substance assigning and transferring to the Kansas City Company an undivided half of the

right, title, franchises and privileges through Forest Park, was sufficient notice to the purchasers of the source of the right and the terms and conditions of the contract granting the right of way through the park as to place the purchasers upon inquiry. But in addition to this, the tripartite agreement was a link in the chain of title of the mortgagees and of the purchasing committee, and therefore they were bound by its terms irrespective of the question of notice. That case absolutely disposes of the claim of the appellant in this case to be relieved from the obligations of the Act of Congress and of the tripartite agreement.

It is argued by the appellant that the mortgage in the Joy case was made *after* the tripartite agreement. As we will hereafter show, that is entirely immaterial. Because, if the mortgagee took the property without notice, then, unless the covenants were such as to be binding upon the successors or grantees of the original company, it would be relieved of those obligations. In other words, it is entirely immaterial whether the mortgage was made before or after the creation of the obligation, for the reason:

*First.* The tripartite agreement between the city, the county and the railroad company was spe-

cifically made binding upon its successors and is a link in the chain of title of the present company. And,

*Second.* The Act of Congress and the tripartite agreement created an easement in the property of the Union Pacific Company that all purchasers or persons acquiring the property in any manner, having notice of this easement, took it subject to those obligations. It will not be denied that the Union Pacific Company had notice of the Act of Congress, that it was passed before the property under consideration came into existence. It was also a link in the chain of title of the defendant company. It applies to the bridge and approaches in whosesoever hands they may come, and whoever may be the owner.

If the very vague reference to the tripartite agreement in the deed of August 17, 1875, in the Joy case was sufficient to place any purchaser upon inquiry as to the obligations of the tripartite agreement in that case, certainly the Act of Congress and the Saunders deed are sufficient to place this defendant upon inquiry. It will also be noted in the Joy case that the clause in the agreement which the Court was enforcing, was simply on its face an obligation of the County Company. It provided, "said party of the second part shall permit" other railroads to

use its right of way through the park and up to the terminus of the road in St. Louis. It did not, in language, apply to the successors, while the tripartite agreement in this case between the city, the county and the railroad company specifically applies to the successors of the First Pacific Company.

Again, the Second Pacific Company undertook to organize a Union Depot Company, and to sell the depot grounds covered by this contract to said Union Depot Company, and to procure from the city a release of the obligation contained in the Saunders deed. One Stuht brought a suit in the District Court of Douglas County to enjoin the city from releasing said obligation to the said Union Pacific Railroad Company and enjoin the Depot company from receiving said property. The Court there held that these stipulations were binding upon any company or purchaser of this depot property. The record of that case will be found on page 212, *et seq.*, Volume 1, of the Record. The opinion of the Court, from which we wish to quote, will be found on page 242, Volume 1, of the Record. The Court said:

> "We do not think that under the Saunders conveyance to the Railroad Company, that this requires that Company always to own and possess the land; but simply that

said land shall be used for the purposes expressed in the contract and deed of 1872. If the Company transfers the same to the defendant, the Union Depot Company, under the same conditions and limitations, and the premises are used for these purposes with the admission of all connecting roads to the benefit of terminal facilities and other conditions of said trust be complied with, there would in such case be no violation of the conditions and no reversion. It is not of much moment as to who occupies the ground in question. The sole object of the people in making this grant to the Company was to obtain the objects expressed in the contract and deed of 1872, and so long as this is obtained there can be no reversion, no matter who owns or possesses the premises."

Opinion of Attorney General Griggs.

In considering the Pacific Railroad Acts Attorney General Griggs held that the clause in the Pacific Charter requiring the Union Pacific Railroad Company to allow any other railroad company to connect with its road is binding upon any purchaser. He said, Volume 22, Opinions of Attorneys General, 399, 400:

"The provisions requiring these Companies to furnish communication and transportation over these lines when required, and giving to the Government a preference in the use of the railroad and telegraph lines for communication and transportation, and at rates not to exceed those paid by private persons for like services; and the requirement that these railroads and telegraph lines shall be kept constantly in repair and use, and that the whole line of the respective railroads and telegraphs and the branches (of which the road here in question is one) shall be operated, as far as the Government and the public are concerned, as one continuous line of telegraph and railroad; the provision that any other railroad company may connect its road with those authorized by these Acts, upon just and fair terms; the provision that whenever the net earnings of a railroad and telegraph line exceed 10 per cent the Congress may reduce the rates to be charged; and the provisions intended to prevent a monopoly, requiring the companies to permit connections of other telegraph lines and to afford facilities for telegraphing over railroad lines of telegraph—all

these and other requirements and provisions of these Acts of Congress are clearly permanent in character, of indefinite duration, and are not discharged by any alienation of the property, but go with it into whosever hands it may go, and are equally obligatory upon every owner."

It is immaterial to this case whether these covenants are such as run with the land or not. Covenants creating an easement which do run with the land are binding upon all purchasers, and covenants not running with the land are always binding upon purchasers with notice, provided they have reference to the use of the property. The Joy case would seem to place this beyond any question, but we have other authority.

C. M. & St. P. Ry. v. Chicago.

In the case of *Chicago, Milwaukee & St. Paul Ry. Company v. Chicago*, 183 Ill. 341, it was held that the obligations imposed upon a railway company authorized to construct its road over and across streets were binding upon the purchaser of the road. The Court said, page 347:

"The appellant, the Pittsburg Company, in a separate argument, contends that it is not liable, under the contract created by the ordinance granting the rights and privileges

to the Columbus Company, to lay and operate its tracks and road in said streets of the city; that it is a mere purchaser of the road and property of the Columbus Company and is not bound by the latter's individual contracts. We cannot concur in this view. The right to construct and operate its road was granted to the Columbus Company and its successors on the express condition that the Columbus Company would do and perform the things required of it by the ordinance. The Pittsburg Company succeeded to all the rights and privileges granted by the ordinance, has exercised and continues to exercise such rights and privileges, and it must perform the conditions annexed to the grant and upon which the exercise of such grant depends. The right to occupy and use this public street was granted on certain conditions imposed for the public safety and convenience, and appellant cannot exercise the right without liability to assume the burden."

Whitney v. Union Railway Co.

In the case of *Whitney v. Union Railway Company*, 11 Gray, page 359, Mr. Justice Bigelow stated the rule as follows, page 363:

"Upon this point the better opinion would seem to be that such agreements are valid, and capable of being enforced in equity against all those who take the estate with notice of them, although they may not be, strictly speaking, real covenants so as to run with the land, or of a nature to create a technical qualification of the title conveyed by the deed. * * * In this view the precise form or nature of the covenant or agreement is quite immaterial. It is not essential that it should run with the land. A personal covenant or agreement will be held binding in equity on a purchaser taking the estate with notice. It is not binding upon him merely because he stands as an assignee of the party who made the agreement, but because he has taken the estate with notice of a valid agreement concerning it, which he cannot equitably refuse to perform."

Parker v. Nightingale.

In the case of *Parker v. Nightingale*, 6 Allen, page 341, the owners of a piece of land agreed verbally between themselves that the property should be laid out into dwelling lots, and that "no other building except one of brick or stone, not less than three stories in height, and for a dwelling house only,"

should be erected by them. The deeds of the lots from the individual owners were made subject to this condition. One Nightingale acquired a lease of one of the houses, and undertook to convert it into a restaurant. Certain other owners of the property proceeded in equity to obtain an injunction. The Court said, page 345:

> "A purchaser of land with notice of a right or interest in it existing only by agreement with his vendor is bound to do that which his grantor had agreed to perform, because it would be unconscientious and inequitable for him to violate or disregard the valid agreements of the vendor in regard to the estate, of which he had notice when he became the purchaser. In such cases it is true that the aggrieved party can often have no remedy at law. There may be neither privity of estate nor privity of contract between himself and those who attempt to appropriate property in contravention of the use or mode of enjoyment impressed upon it by the agreement of their grantor, and with notice of which they took the estate from him. But it is none the less contrary to equity that those to whom the estate comes, with notice of the rights of another

respecting it, should willfully disregard them, and in the absence of any remedy at law the stronger is the necessity of affording in such cases equitable relief, if it can be given consistently with public policy, and without violating any absolute rule of law. These principles were fully explained and applied by this Court in the recent case of *Whitney v. Union Railway*, 11 Gray, 359, and are constantly acted upon by the Court of Chancery in England and by the courts of this country exercising equity powers. *Mann v. Stephens*, 15 Sim. 377; *Tulk v. Moxhay*, 11 Beav. 571, and 2 Phillips R. 774, and 1 Hall & Twells, 105; *Patching v. Dubbins*, Kay, 1; *Coles v. Simms*, 5 De G., Macn. & Gord. 1, and 1 Kay, 56; *Piggot v. Stratton*, De G., Fisher & Jones, 33."

Kirkpatrick v. Peshine.

In the case of *Kirkpatrick v. Peshine*, 24 N. J. Eq. 206, the owners of a certain tract of land sold a building lot, and agreed in the contract of sale that if any other building lots in that tract were sold they would be subject to the condition that the building was to set back twelve feet from the line of a street. Subsequent sales were made, and under one of those sales a party undertook to erect a building nearer than twelve feet from the street. The first

purchaser procured an injunction. Chancellor Runyon, writing the opinion, said, page 213:

> "The agreement between Messrs. Mackin, McClane and Keasbey with the complainant is one to which equity will give effect as against a subsequent grantee, with notice. It is one of that class of cases in which equity will charge the conscience of a grantee of land with an agreement relating to the land although the agreement neither creates an easement nor runs with the land. The jurisdiction of courts of equity over contracts and covenants is not confined to cases where an action at law can be maintained, but extends to cases where an action at law is not maintainable. Covenants controlling the enjoyment of land, though not binding at law, will be enforced in equity, provided the person into whose hands the land passes has taken it with the notice of the covenants. *Kerr on Injunctions*, 530; *Sugden on Vendors*, 596. 'The question,' said Lord Cottenham, in *Tulk v. Moxhay*, 2 Ph. 774, 'is not whether the covenant runs with the land, but whether a party shall be permitted to use the land in a manner inconsistent

with the contract entered into by his vendor, and with notice of which he purchased.'

" 'Reason and justice,' said Lord Justice Knight Bruce, in *DeMattos v. Gibson*, 4 De G. & J. 282, 'seem to prescribe, that at least, as a general rule, where a man, by gift, or purchase, acquires property from another, with knowledge of a previous contract, lawfully, and for a valuable consideration, made by him with a third person, to use and employ the property for a particular purpose in a specified manner, the acquirer shall not, to the material damage of the third person, in opposition to the contract, and inconsistently with it, use the property in a manner not allowable to the giver or seller.' "

Commonwealth v. Hancock Free Bridge Corporation.

In the case of *Commonwealth v. Hancock Free Bridge Corporation*, 2 Gray, page 58, the Hancock Free Bridge Corporation was indicted for a failure to keep a certain public highway in Cambridge, Brighton and Watertown in repair. The question involved was whether, by purchase of the bridge and franchises from the West Boston Bridge Company, it became obligated to repair this highway. The West Boston Bridge Company was the owner of a toll bridge. Subsequent to its incorporation it was au-

thorized by the legislature to construct a road from Watertown to Cambridgeport, being a short section, less than a mile long, and it was provided in the Act that the towns of Watertown, Brighton and Cambridge should never be compelled to support any part of the highway. Subsequently, the Hancock Free Bridge Corporation was authorized to purchase "the West Boston Bridge, and the franchises thereof." The Court held that by the purchase of the bridge and its franchises it became obligated to fulfill the burdens cast upon the West Boston Bridge Company. The court said, page 64:

> "What then was it intended, by St. 1846, that the defendants should purchase, and that the proprietors of West Boston Bridge, as a chartered corporation, should sell, upon the terms proposed? Construing the concise terms used, with the obvious purpose and intent, we are of opinion that the subject of this transfer was the entire amount of the property, rights, privileges and powers held by them, as such corporations, subject to the duties and burdens necessarily incident thereto. But it is argued, on the part of the defendant corporation, that by the words, 'their bridge and the franchise thereof,' they mean bridge

as a structure, and the right or capacity to own it, and take toll upon it. But we think this by far too narrow, and not the true construction. 'The franchise of a bridge' as a structure would be unintelligible. Notwithstanding in critical nicety, the last antecedent of 'thereof,' is 'bridge,' and so it must be grammatically construed; yet such critical nicety cannot control the obvious intent of the legislature in the whole Act, to use the terms 'West Boston Bridge and the franchise thereof,' as *nomen generalissimum*, and thereby to include the entire chartered powers of the corporation.

"The argument for the defendants seems to be refuted by the original act itself. St. 1791, c. 62. The grant of power, in the first sentence, is to build a bridge from the westerly part of Boston to Pelham's Island in Cambridge. The Legislature well understood what was intended by a bridge structure, for they direct that it be well covered with plank or timber, with sufficient rails for the security of passengers. But they further direct that said corporation shall lay out and make a good road from Pelham's Island aforesaid to the

nearest part of the Cambridge road. This, it is understood, was a road or causeway, over marsh and flats nearly as long as the bridge itself, to be made at considerable expense, and without which the bridge itself would have been utterly useless. Was not the right of making this road, and the duty of making it, though no part of the bridge structure, within the franchise of the corporation?"

This case is clearly in point. It gave a liberal construction to the term "bridge and franchises," and held the burden to maintain this strip of highway across the marshy land was a franchise of the bridge, and, when the Hancock Free Bridge Company purchased it, it became obligated by the condition imposed upon its grantor.

## IV.

Decree of foreclosure did not cut out this right.

**But it is claimed by the appellant, that the decree of foreclosure cut out the rights of the public and of other railroad companies to run their trains over the bridge and its approaches, and that the present company purchased under that decree the property free and clear of any of the provisions of the tripartite agreement contained in the Saunders deed, and of the obligations imposed by the act of Congress.**

We think we have sufficiently demonstrated the fallacy of this argument. There are several reasons which may be given as a complete answer to this proposition.

*First.* Neither the city, the county, nor the complainant railway company were parties to the suit, and therefore, of course, could not be affected by the decree. There is absolutely nothing in the decree which could in the slightest degree be construed to affect this public right or easement. It adhered to and was appurtenant to the property and passed with it to the purchaser. Neither would it have been possible for the Court to have made a decree which

could have affected this right. The question was considered by Judge Sanborn in the foreclosure of this mortgage. It was urged by the government in that case that the master erred because he did not report that the railway was subject to the provisions of the first sentence of the fifteenth section of the Act of July 1, 1862, which provides as follows:

> "That any other railroad company now incorporated or hereafter to be incorporated shall have the right to connect their road with the road or branches provided by this act, at such places and upon such terms as the President of the United States may prescribe."

Upon this question Judge Sanborn held as follows—Record page 356:

Judge Sanborn's opinion in foreclosure case.

> "Finally, it is urged that the master erred because he did not report that the railway is subject to the provisions of the first sentence of the fifteenth section of the Act of July 1, 1862, which provides: 'That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this Act, at such places and upon such just and equitable terms as the

President of the United States may prescribe.' (12 Stats. at Large, Ch. 120, p. 496.)

"But this provision of the Act of Congress established no right or title and created no lien in favor of any of the parties to these suits. At most, it imposes a burden upon the franchises granted to the railroad company for the benefit of the public, and it stands like any other burden imposed upon one who accepts a franchise. It was the duty of the master, and it is that of the Court, to determine the amounts and the rank of the liens of the various parties to these suits. In the discharge of that duty it has been necessary to consider and decide whether or not the Government had a lien upon this railroad for the compensation for services rendered by it to the United States which was superior to that of the general first mortgage. But the character and extent of the franchises granted to the Union Pacific Railroad Company and its successors, by the United States, the benefits conferred and the burdens imposed upon them for the benefit of those who are not parties to these suits, are described and defined in the Acts of Congress with a clearness and ac-

curacy which the Court could not hope to rival, and it ought not to attempt to define them in the absence of the parties who are or may hereafter become pecuniarily interested in them. The provision of Section 15 in question was not enacted for the benefit of any of the parties to these suits, and it was properly omitted from the report of the master, because no issue relative to it has arisen herein. If this provision is a part of the franchise to operate this railroad, and if it imposes a burden inseparable from that franchise, the purchaser of the latter will take subject to that burden; if it is not a part of that franchise, and does not condition it, he will take free from this burden—and no opinion or decree of this Court in these cases could change that result in the absence of the parties that now are or may hereafter become pecuniarily interested in enforcing this provision. The exception upon this subject must be overruled."

In substance he held that no opinion or decree of is Court in the foreclosure case could affect the hts of any railroad thereafter undertaking to ence these covenants. The issues in the foreclosure re simply as to the priority of the liens and the

rights of the complainant to a foreclosure and a sale of the property. The Court did not nor could not have cut out the right of this complainant, or of the public, to compel the Union Pacific Railroad Company to carry out the terms of the bridge act or of the tripartite agreement. The reorganization committee took the property subject to this right.

Credits Commutation Case.

In the case of the *Credits Commutation Company v. the United States*, 177 U. S., 311, the Credits Commutation Company undertook to intervene and to raise the issue of whether the purchaser of the property would be bound by the clause above quoted as to connections with other lines. Mr. Justice Shiras in writing the opinion held that that issue was entirely immaterial to the foreclosure. He said:

> "The petitioners were under no obligation to intervene in the litigation against the Union Pacific Railway Company to preserve their alleged right to form a junction with the road of that company when they should have completed their own road to a suitable junction point. The question which they sought to litigate in the pending litigation could, we think, with more propriety and with less difficulty, have been litigated by an independent bill after they had completed, or were about

completing, their line to a suitable junction point. Prior to that time the questions which they sought to raise bv means of the intervening petitions were speculative questions which the lower Court, as we think very properly, refused to consider or determine."

Act of 1871 amendment to Pacific Railroad Act.

*Second.* The Act of 1871 was an amendment to the charter of the Union Pacific Railroad Company, granting to it certain franchises and privileges and providing the manner of the use of a certain part of its property for reasonable compensation. The original charter of the Union Pacific Railroad Company, Section 18, provided:

"And the better to accomplish the object of this Act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in the time of war) the use and benefits of the same for postal, military and other purposes, Congress may, at any time, having due regard for the rights of said Companies named herein, add to, alter, amend or repeal this Act."

Under this reserve power, Congress undoubtedly had power to regulate the manner of the use of

said public highway for reasonable compensation and that is what was done by this Act.

Sinking Fund Cases, 99 U. S. 700.

*Canada Southern Railway v. International Bridge Co.*, 8 Fed. Rep. 192.

*New York & New England Railroad Company v. Bristol*, 151 U. S. 567.

*Tomlinson v. Jessup*, 15 Wal. 459.

*Miller v. State*, 15 Wal. 498.

*Railroad Company v. Maine*, 96 U. S. 510.

*Pearsall v. Great Northern Ry.*, 161 U. S. 646, 656.

Sinking Fund Cases.

In the Sinking Fund Cases Congress had by a subsequent Act, established a sinking fund to be taken from the earnings of the Union Pacific Railroad Company. It was claimed that this Act was unconstitutional. Mr. Chief Justice Waite, in delivering the opinion said:

> "This corporation is a creature of the United States. It is a private corporation created for public purposes, and its property is to a large extent devoted to public uses. It is, therefore, subject to legislative control so far as its business affects the public interests. *Chicago, Burlington & Quincy Railroad Co. v. Iowa*, 94 U. S. 155. It is unnecessary to de-

cide what power Congress would have had over the charter if the right of amendment had not been reserved; for, as we think, that reservation has been made. In the Act of 1862, Sec. 18, it was accompanied by an explanatory statement showing that this had been done 'the better to accomplish the object of this Act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but especially in time of war) the use and benefits of the same for postal, military and other purposes,' and by an injunction that it should be used with 'due regard for the rights of said Companies.' In the Act of 1864, however, there is nothing except the simple words (Sec. 22) 'that Congress may at any time alter, amend and repeal this Act.' Taking both Acts together, and giving the explanatory statement in that of 1862 all the effect it can be entitled to, we are of the opinion that Congress not only retains, but has given special notice of its intention to retain, full and complete power to make such alterations and amendments of

the charter as come within the just scope of legislative power.

"Giving full effect to the principles which have thus been authoritatively stated, we think it safe to say that, whatever rules Congress might have prescribed in the original charter for the government of the corporation in the administration of its affairs, it retained the power to establish by amendment."

omlinson v. essup, 15 Wal. 454.

In the case of *Tomlinson v. Jessup*, Mr. Justice Field, speaking for the Supreme Court, said:

"The reservation affects the entire relation between the State and the corporation, and places under legislative control all rights, privileges and immunities derived by its charter directly from the State."

Railroad v. Maine, 96 U. S. 510.

In *Railroad Co. v. Maine*, the Supreme Court of the United States had under consideration the same question. By a general law of Maine, it was provided that all charters thereafter passed were subject to be amended, altered or repealed. A special charter was thereafter granted to various railroad companies which were consolidated into the Maine Central Railroad Company. The court held the consolidated company's charter subject to amendment,

alteration and repeal; that, although the general provision of the statute to that effect might be disregarded by subsequent legislatures, still, until so repealed, it must be construed to have entered into and become a part of each subsequent charter; and the court said:

> "By the reservation in the law of 1831, which is to be considered as if embodied in that act, the State retained the power to alter it in all particulars constituting the grant to the new company formed under it, of corporate rights, privileges and immunities. The existence of the corporation, and its franchises and immunities, derived directly from the State, were thus kept under its control."

In the case of *Pearsall v. Great Northern Railway*, 161 U. S. 646, this court held that the charter of the Great Northern Railway Company, authorizing it to purchase parallel and competing lines, was subject to amendment and repeal by the Legislature, in the exercise of its police power, in pursuance of the general public policy, although no reservation to alter, amend and repeal was contained in the original charter of the company.

It was held in the *Rock Island* case, 163 U. S., page 589, that the Union Pacific Company parted

with no property or franchise in making the contract to allow the Rock Island Company to run its trains over the bridge and its approaches; that it did not "alien any property or right necessary to the discharge of its public obligations and duties, but simply widened the extent of the use of its property for the same purposes for which that property was acquired, to its own profit, so far as that use was concerned."

We take it to be self-evident that, under this reserve power, Congress could have imposed upon the Union Pacific Company this obligation (if it may be deemed an obligation) without the granting of any franchises, rights and privileges as was done by the Act of 1871. In the Court of Appeals the counsel conceded this position (page 80 of his brief), but argued that Congress could not do this as against the first mortgage bondholders. Let us inquire how the first mortgage bondholders could be injured. This Act did not take from the Union Pacific any property without compensation; it impaired the obligation of no contract; it regulated the use of that property, as the Court said, for compensation. Reasonable compensation is all the Union Pacific Company would be entitled to if it hauled the freight of the complainant Company with its own engines and

ars, and reasonable compensation it was granted nder this Act of Congress. The first mortgage was ıade and accepted subject to all of the limitations, eservations and power of amendment, supervision nd control by the Congress of the United States.

*Third.* When the Act of Congress of 1871 was assed and the bonds voted by the city and the ounty, the tripartite agreement made, and the depot roperty deeded to the Union Pacific Railroad Comany, the bridge, its approaches and the tracks conected therewith between Council Bluffs and Twenieth street were not constructed, and hence were ot covered by the first mortgage or the lien of the overnment. In fact no bonds for the construction f this road were ever issued under the Government ıortgage or the first mortgage. Under this Act of 871 the money was procured with which to conruct this line of road and the bridge and depots, ith the exception of that donated by the city and ıe county. When the property was therefore rought into existence and the Union Pacific mortage and the Government mortgage attached, it was urdened with an easement (if it may be called a urden) requiring the railroad company and its sucessors to allow the trains of any other road to run ver that property and so much of the Union Pacific

Prior mortgage attaches to subsequent acquired property subject to easements.

Company's tracks as were necessary to connect the eastern with the western lines. The property was brought into existence by virtue of the privileges granted by Congress, and by the money raised by the city and the county; and when the first mortgage bondholders claimed a lien upon it, foreclosed the mortgage and took the property, they, of necessity, accepted that property burdened with the easements imposed by the donators and by Congress. A party cannot take property and enjoy its benefits, and at the same time escape the burdens. It will not do to say that the property constructed under the Act of Congress was only to Twentieth street. As a consideration for this property and for the powers granted it to raise two and a half million dollars by mortgage, the Union Pacific Company agreed that so much of its tracks as were necessary to make the connections might be used by other companies. It was a mere regulation of the use; and by taking the property under foreclosure it took it burdened with all of the easements to the full extent.

Judge Sanborn's Opinion, Vol. 1, pages 352-3, Record.

*Lake Erie & Western Ry. Co. v. Priest*, 131 Indiana, 413; s. c., 31 N. E. 77.

*Midland Ry. Co. v. Fisher*, 125 Ind. 19; s. c., 24 N. E. 756.

*Central Trust Co. v. Kneeland*, 138 U. S. 414.

*St. Joseph, Etc., Co. v. Chicago, Etc., Co.*, 89 Fed. 648.

In passing upon the priority of the bridge mortgages over the Government mortgage, Judge Sanborn said—Record page 352:

> "It is clear that when this mortgage was made neither the bondholders secured by the general first mortgage nor the Government had any lien upon the bridge or upon the Bridge Division of the present railroad, because neither of these were then in existence. It is equally plain that neither the Government nor these bondholders expected or intended that the security which they permitted the railroad company to offer in order to obtain the money to construct this bridge would be subordinate to their liens. The aggregate amount of the incumbrance upon the railroad, as it was then constructed, was more than $54,000,000. Neither the Government nor the holders of the first mortgage bonds could have intended or supposed that a third lien for $2,500,000 on four miles of this railroad, sub-

ject to their liens for $54,000,000, would induce purchasers to take these Bridge Mortgage bonds. On the other hand, it was plainly upon the theory that the mortgage of April 1, 1871, would constitute a first lien upon the bridge and its approaches, that Congress authorized—and the first mortgage bondholders acquiesced in—its execution, and that the holders of the bridge bonds purchased them and furnished the funds which built the bridge. It would be unjust, inequitable, and a violation of the faith upon which the bridge bonds were sold to permit the first mortgage bondholders or the Government now to displace the lien of the bridge bonds, to destroy their security, and to appropriate to themselves the valuable improvement produced by the funds realized from the sale of these bridge bonds."

St. Joseph Union Depot Co. v. C. R. I. & P. Ry.

In the case of the *St. Joseph Union Depot Co. v. The Chicago, Rock Island & Pacific Railway Company*, 89 Fed. 648, Judge Shiras, writing the opinion for the Court of Appeals, said:

"* * * It is true that the trust deed to the Metropolitan Company was executed before the contract between the Depot and

Kansas Companies; but, that being true, it is clear that the lien of the trust deed did not then attach to the property rights created by the depot contract, because the same were not in existence. If the lien of the trust deed ever attached to the right to use the depot, it could only do so through the clause in the deed relating to after-acquired property; and it is well settled that the lien of the trust deed, in such case, does not attach until the property is acquired as part of mortgaged estate, and will be subject to the rights of third parties existing therein or thereto, when it passes under the lien of the pre-existing mortgage or trust deed. *U. S. v. New Orleans & O. R. Co.*, 12 Wall. 362; *Trust Co. v. Kneeland*, 138 U. S. 414, 11 Sup. Ct. 357.

"* * * * If the defendant, upon the completion of the purchase made at the foreclosure sale, had wholly abandoned the use of the depot facilities for the trains run over the Kansas lines, it might have had reason for claiming that it intended to take the property free from the obligations arising under the contract between the Depot and Kansas Companies; but this it did not do, but, on the

contrary, it continued to use the depot facilities for the Kansas trains, which it would have had no right to do, except as the successor of the Kansas Company; and, having thus availed itself of the benefits of the contract with the Depot Company, it must respond to the obligations therein contained."

Lake Erie & Western Ry. v. Priest.

This was also held in the case of *Lake Erie & Western Ry. Co. v. Priest*, 131 Ind. 413, 31 N. E. 78, in which the provision in a deed of land to a railroad company for a right of way that the grantee would maintain a fence, was binding upon a purchaser of the railroad under a foreclosure of a mortgage made prior to the time the deed was executed. The court said:

"The acceptance of the deed imposed a burden upon the land which was not only binding upon the original grantor but runs with the title and is equally binding upon all who claim through the original grantor. The fact that the mortgage was executed before the deed was made could not operate to give the mortgagee or those claiming under it any rights superior to the rights of the appellee the grantors."

Midland Ry. v. Fisher.

In the case of *Midland Ry. Co. v. Fisher*, 125 Ind. 19, 24 N. E. 756, the Supreme Court of Indiana held that the conveyance of a railroad right of way, reciting as the consideration thereof that the grantees should construct a fence on both sides of the track, was a covenant binding upon all the purchasers of the railroad and its franchises. This case contains a very elaborate discussion of the question.

Harris v. Youngstown Bridge Co.

This subject received consideration in the opinion of Judge Taft in the Circuit Court of Appeals of the Sixth Circuit in the case of *Harris v. Youngstown, Bridge Company*, 90 Fed. Rep. 328, in which the court, speaking of the limitations upon the doctrine that the prior mortgage will attach to all after-acquired property, said:

> "The chief is that the mortgagee of after-acquired property is not a purchaser for value, and cannot acquire an interest by way of lien greater than that which the mortgagor has himself acquired. The lien of the mortgage attaches to after-acquired property in the condition in which the mortgagor takes it from his vendor, and subject to all known liens and equities valid against the vendor, and also subject to all liens or equities valid against the vendee and mortgagor which arise in the act

of purchase or acquisition, and therefore necessarily qualify its scope and extent. Thus, a vendor's lien on the property, good against the mortgagor, is prior in right to that of the mortgagee under an after-acquired property clause. So, too, a purchase-money mortgage upon after-acquired property is not displaced by the lien of a prior mortgage of the mortgagor containing an after-acquired property clause, because in equity the purchaser is regarded as taking only the difference between the value of the property and the amount still due on the price. *U. S. v. New Orleans R. R.*, 12 Wall. 362. In cases of conditional sales to the mortgagor, the mortgagee, under the after-acquired property clause, obtains a lien subject to the same defeasance or forfeiture as that to which the title of his mortgagor is subject. *Fosdick v. Schall*, 99 U. S. 235, 251; *Myer v. Car Co.*, 102 U. S. 1; *Trust Co. v. Groome*, 2 U. S. App. 95, 105, 1 C. C. A. 133, 48 Fed. 868; *Loomis v. Railroad Co.*, 17 Fed. 301, 305. And it is even held that if the property comes into the hands of the mortgagor subject to a lien which is good against him, though, for want of formalities,

it is not good against his subsequently attaching creditors and third persons, it is nevertheless prior to the lien of a mortgagee under an after-acquired property clause."

In *Fosdick v. Schall*, 99 U. S. 251, Chief Justice Waite, speaking on this subject, said: Fosdick v. Schall.

"But as to that class of property it is well settled that the lien attaches subject to all the conditions with which it is incumbered when it comes into the hands of the mortgagor. The mortgagees take just such an interest in the property as the mortgagor acquired—no more, no less."

To the same effect is the case of the *United States v. New Orleans Ry.*, 12 Wall. 362. Mr. Justice Bradley said: U. S. v. New Orleans Ry.

"The appellants contend, in the next place, that the decision upon the facts was erroneous; that the mortgages, being prior in date to the bond given for the purchase money of these locomotives and cars and being expressly made to include after-acquired property, attached to the property as soon as it was purchased, and displaced any junior lien. This, we apprehend, is an erroneous view of

the doctrine by which after-acquired property is made to serve the uses of a mortgage. That doctrine is intended to subserve the purposes of justice, and not injustice. Such an application of it as is sought by the appellants would often result in gross injustice. A mortgage intended to cover after-acquired property can only attach itself to such property in the condition in which it comes into the mortgagor's hands. If that property is already subject to mortgages or other liens, the general mortgage does not displace them, though they may be junior to it in point of time. It only attaches to such interest as the mortgagor acquires; and if he purchase property and give a mortgage for the purchase money, the deed which he receives and the mortgage which he gives are regarded as one transaction, and no general lien impending over him, whether in the shape of a general mortgage, or judgment, or recognizance, can displace such mortgage for purchase money. And in such cases a failure to register the mortgage for purchase money makes no difference. It does not come within the reason of the registry laws. These laws are intended

for the protection of subsequent, not prior, purchasers and creditors."

See also *Bear Lake Irrigation Co. v. Garland*, 164 U. S. p. 16, opinion.

N. P. Ry. v. Townsend.

In this connection the case of *Northern Pacific Ry. Co. v. Townsend*, 23 Sup. Ct. Rep. 671, is entitled to consideration. In that case one Townsend claimed to have obtained title to a piece of the Northern Pacific right of way by adverse possession. The Supreme Court of the United States held that the right of way granted by Congress was a grant burdened with a public easement — that the property should be used for certain purposes, and that the company had no power to alien it so as to destroy this easement; hence it could not lose it by adverse possession. The case is in point here. The Union Pacific Railroad Company obtained the depot property, constructed the bridge, depot tracks, and tracks connected therewith, with a covenant as to the manner of its future use attached to it. It was in the nature of a public easement for the benefit of any other railway company that might wish to make connections in order to form through lines of railway, and for the benefit of the public, which would be incidentally benefited thereby. This public easement was inseparable from the property.

The mortgagee takes no more than the mortgagor had. His title is derivative. In the foreclosure proceedings he takes the property burdened with all the public franchises, easements and obligations, as distinguished from direct personal obligations like debts.

The counsel for appellant in his brief in the Court of Appeals (page 80) said that our position would be true if the defendant was a purchaser from the old Union Pacific Company, but seemed to think that under the prior mortgage the Third Pacific Co. got some peculiar right, or took the property free from its burden in some way that a purchaser would not. We would like to have explained how it is that a mortgagee can get something that the mortgagor did not have, or how by the foreclosure of a mortgage the purchaser thereunder could get a title superior to the title of the mortgagor so far as the property itself is concerned.

Defendant Company had actual notice of Act of Congress and Saunders Deed.

*Fourth.* Not only did the defendant company have constructive notice of the Act of Congress, and the tripartite agreement contained in the Saunders Deed, but it had actual notice. The Saunders Deed was found among the title papers of the Union Pacific Railroad Company. The whole subject of the obligations of the Second Pacific Company to the

public under the Act of Congress and the Saunders Deed was before the court several times. In 1894, J. Pierpont Morgan and Elisha F. Atkins, Trustees of the first bridge mortgage, filed their petition in the Ames case, Record, page 278, in which it set forth the obligations of the first mortgage, giving the Trustees the right to fix tolls, not only on the bridge and depots connected therewith, but on the lines of track required to connect the said bridge with the railroads having their terminus at Omaha and Council Bluffs, and asked that these tolls be set aside for the benefit of the Trustees of this mortgage. This was done by order of the Court,—Record, page 281.

Bridge Division operated separately.

After the commencement of the Dexter foreclosure, being the first mortgage upon the Union Pacific Railway, a petition was filed by the Receivers, asking for instructions as to the management of the bridge and property connected therewith, and the rates, and the disposition of the revenues arising from the operation of the said bridge and property. The Trustees of the first mortgage appeared in this proceeding, and an order was made requiring the Receivers to keep a separate account of the revenues to be derived from the tolls levied upon said bridge property, as directed by the mortgage.

Petition of receivers stating conditions attached to Saunders deed, and asking that depot contract with Burlington be set aside.

Again, the Receivers of the Union Pacific Company filed a petition in the Dexter foreclosure case, in which the following allegation appears, Record, page 290:

> "1. The Union Pacific Railroad Company acquired title to a large number of lots and blocks, and to certain parts of streets and alleys, in the City of Omaha, about the year 1872; which lots and blocks and parts of streets and alleys aggregated in amount 28 acres, or thereabouts; that said property was acquired under and by virtue of certain agreements with the City of Omaha and County of Douglas, Nebraska, and under certain conveyances made by the said City of Omaha, and by Alvin Saunders, Trustee, to said Union Pacific Railroad Company; which agreements and conveyances will more particularly and fully state the terms and conditions under which it has been claimed the said Union Pacific Railroad Company obtained and held title to said lands. Reference is hereby had to the said several agreements and conveyances, and leave is prayed that they and each of them may be read and exhibited on the hearing hereof, and that they may be made a part here-

of on such hearing with the same effect as if each thereof was herein pleaded and set out at length.

"2. That about the year 1872, said Union Pacific Railroad Company entered into the possession as owner and claimed title to said lots, blocks, streets and alleys, and thereafter continuously occupied said premises, and from time to time placed thereon large numbers of tracks, turnouts, switches, its freight station, built thereon a passenger station and expensive and valuable bridges and other facilities used for the operation of its line of railroad; that the east line of said grounds was adjacent to the immediate approaches to the bridge of the Union Pacific Railroad Company over the Missouri River, and that said grounds constituted a portion of the line of railroad of said railroad company between the main line thereof and the bridge over the Missouri River and the eastern terminus of said railroad at Council Bluffs, Iowa, and constituted and were and are a part of the premises since that time and now known as the Bridge Division of the Union Pacific Railway Company's property."

The petition then sets forth that an agreement had been made between the Union Pacific Railway Company and the Chicago, Burlington & Quincy Railway Company for an Omaha Union Depot; that a depot company had been organized; that stock had been subscribed by the two companies, and certain work had been done upon the depot; that on the 26th day of December, 1889, the Mayor and City Council of Omaha passed an ordinance providing for the conveyance of the depot property covered by the Saunders deed to the Omaha Union Depot Company; that thereupon one Stuht, and John D. Howe, brought a suit in the District Court of Douglas county against the Depot Company and the City, to enjoin and restrain the conveyance of said property, on the ground that the same was impressed with a trust in favor of the public. The petition prays that the agreement between the Union Pacific Railway Company and the Chicago, Burlington & Quincy Railway Company be set aside, and that the money be returned to the Union Pacific Company and the Burlington Company. In this petition Winslow S. Pierce appeared as Solicitor for F. Gordon Dexter, et al., Trustees under the mortgage under which the first foreclosure in this case took place,—Record, pages 317 and 318.

Upon hearing an order was made carrying out the petition,—Record, page 326.

Petition of receivers for leave to convey property to Bridge Terminal Co. Answer of the Burlington and Rock Island Companies thereto.

Again, on July 5, 1897, the Receivers of the Union Pacific Railway Company filed a petition in the Dexter Case, in which the Trustees of the Bridge Mortgage and the United States were also parties, in which the Receivers asked leave to enter into agreements with the Omaha Bridge & Terminal Railway Company to construct a Union Passenger Station in Omaha. The Rock Island and the Burlington Companies filed answers to this petition. The answer of the Burlington Company sets forth among other things its previous agreement for a Union Depot in Omaha, and sets forth in substance the voting of the bonds by the city and county to aid in the construction of the Union Pacific bridge, depot and terminals, and the conditions of the Saunders deed, under which said property was voted to the Union Pacific Railroad Company.—See subdivision 8, Answer, page 341, Record. It also sets forth the Stuht case brought against the Union Depot Company and the City of Omaha, in which an injunction was obtained, restraining the City from conveying the depot grounds to the Depot Company, and thereby attempting to release the conditions of the tripartite agreement contained in the Saunders deed. At-

tached to this answer is a copy of the decree in the Stuht case,—Record, page 348. The Rock Island answer was substantially similar. Thereafter, no proceedings were taken therein, except to dismiss the petition of the Receivers for the conveyance of said property. In this case, as in the others, the Trustees of the first mortgage, the Government of the United States, and all of the other parties to the Dexter and Ames cases were parties, and had knowledge of the fact; and Winslow S. Pierce was the attorney of the Trustees of the first mortgage.—See Pierce's testimony, Record, pages 514 and 515.

Reorganization of Union Pacific Railway Co.

*Fifth.* We now come to the manner of the transfer of the property of the Union Pacific Railway Company to the defendant, the Union Pacific Railroad Company. This was done pursuant to a plan and agreement of reorganization. We doubt very much the materiality of this evidence, for the reason that the Union Pacific Company undoubtedly took the property burdened with the conditions imposed by the Government for the benefit of the public, and the conditions imposed by the City and County, contained in the tripartite agreement. As the Saunders deed conveyed part of the property voted to the defendant company, it certainly could not take the property and use it without being bound by the con-

ditions imposed upon it; but it will take but little time to show that the organization of the present company was simply a reorganization by the stockholders and bondholders of the old company, and that the present company was not an innocent purchaser, taking the property free and clear from any conditions, even if it was possible for it to take and hold such property without being bound by the obligations imposed upon the property. The plan of reorganization is contained on pages 460 to 494 of the Record. It is called a "Plan of Reorganization of the Union Pacific Railway Company," and is signed by the Reorganization Committee, consisting of Louis Fitzgerald, Jacob H. Schiff, T. Jefferson Coolidge, Jr., Chauncey M. Depew, Marvin Hughitt and Oliver Ames, 2nd—Record, page 464. It recites the different securities of the Union Pacific Railway Company, including all of its capital stock, $60,868,-500—Record, page 469. It provides for the issue of new mortgage bonds of $100,000,000, 4 per cent preferred stock, $75,000,000, and common stock, $61,-000,000. It also provides that each common stockholder of the old company depositing his stock with the Committee, and paying $15 a share, shall receive preferred stock for the $15 per share, and share for share in the common stock of the new company for

the common stock of the old company—Record, page 477.

It appears by the testimony of Mr. Krech, who is Vice President of the Mercantile Trust Company, and who was Secretary of the Reorganization Committee, that out of a total of $60,868,500, there was deposited with the company $60,691,050 of the common stock, for which new stock was issued share for share, and that as to the balance (about $100,000) the assessment was paid by the Reorganization Committee, and preferred stock issued to them for the assessment, and common stock issued for all of the stock not so deposited, so that practically the shareholders of the old company were the shareholders in the new company. The plan of reorganization was an agreement between the various stockholders and bondholders for the mutual reorganization of the company.

We invite the Court's attention to the agreement of reorganization, found on pages 481 et seq. of the Record. It recites that it is an agreement between the Reorganization Committee and the holders of the bonds and stock of the Union Pacific Railway Company, and recites, among other things, that

> "Whereas, the parties of the first part have been, and hereby are, constituted a Com-

mittee for the reorganization of the affairs of the Union Pacific Railway Company proper, inclusive of its Kansas Pacific lines, and have formulated the annexed Plan for such reorganization."

Then follows the various agreements providing that the depositors of securities shall receive receipts therefor, and shall receive their new securities according to the plan; that such receipts shall not be transferable, except as provided by the agreement, and in such manner as the Committee shall approve. It also provides in substance that each depositor of stock or bonds shall transfer to the Committee such stocks and bonds, thereby vesting the Committee with such as absolute owner — Record, page 483. And by the second section, on page 484, each stockholder and security holder does assign and transfer, absolutely, to the Committee, his stock and securities, vesting the Committee with such as absolute owner. We invite the Court's attention to the powers contained in this clause. It authorizes the Committee to vote the stock; to terminate, dissolve or modify any trust or lease in whole or in part; to satisfy or compromise or settle any obligations against the Union Pacific Railway Company; to apply for receivers, or the removal of receivers of the

Railway Company; or for the termination of any receivership, and the delivery of any property to its owners; to enter into settlement of any litigation; and contains, also, the following specific powers—Record, pages 485 and 486:

> "with plenary power to enter into arrangements for decrees, or for facilitating or hastening the course of litigation, or in any way to promote the objects of the plan and the purposes of the Committee; to do whatever, in the judgment of the Committee, may be necessary to promote or to procure such joint or separate sales of any property or franchises herein concerned, as the Committee may deem desirable, wherever the same may be situated; to adjourn the sale of any property or franchises, or of any portion or lot thereof at discretion; to bid or to refrain from bidding at any sale, either public or private, either in separate lots or as a whole, for any property or franchise or any part thereof, whether or not owned, controlled or covered by any deposited security, including or excluding any particular rolling stock, or other property, real or personal, and at, before, or after, any such sale, to arrange and agree for the resale

of any portion of the property which the Committee may decide to sell rather than to retain; to hold any property or franchise purchased by the Committee either in its name or in the name of persons or corporations by it chosen for the purposes of this agreement, and to apply any security deposited hereunder in satisfaction of any bid, or towards obtaining funds for the satisfaction thereof; it being understood that the term property and franchises includes any and all railroads, railroad and other transportation lines, leaseholds, stock or other interests in corporations in which the Union Pacific Railway Company has any interest of any kind whatever, direct or indirect. The amount to be bid or paid by the Committee for any property or franchises shall be absolutely discretionary with it; and in case of the sale to others of any property or franchise the Committee may receive out of the proceeds of such sale or otherwise any dividend in any form accruing on any securities held by it."

The fifth subdivision gave the Committee full power to organize one or more new companies, or to use any existing company, for the purposes of reor-

ganization. We quote the fifth subdivision so far as important to this consideration,—Record, pages 488 and 489:

"The committee may procure the organization of one or more new companies, or may adopt or use any existing or future companies, and may cause to be made such consolidations, leases, sales or other arrangements, and may make or cause to be made such conveyances or transfers of any property or securities acquired by the Committee and take such other steps as the Committee may deem proper for the purpose of creating the new securities provided for in the plan, and carrying out all or any of the provisions thereof.

"The Committee may negotiate and agree with any and all companies or persons for obtaining or granting running powers, terminal facilities, exchanges of property, or any other conveniences which it may deem necessary or desirable to obtain or to grant, and may make contracts therefor binding upon such new company; and generally may authorize, ratify and make such purchases, contracts, stipulations or arrangements as will in its opinion operate directly or indirectly to aid in the

preservation, improvement, development or protection of any property of the Union Pacific Railway Company, or to prevent or avoid opposition to, or interference with, the successful execution hereof.

"The Committee may proceed under this agreement, or any part thereof, with or without foreclosure, and may exercise any power after foreclosure sale.

"Any action contemplated in the plan or agreement to be performed on or after completion of reorganization may be taken by the Committee at any time when it shall deem the reorganization advanced sufficiently to justify such course, and the Committee may defer, as it may deem necessary, the performance of any provision of the plan or agreement, or may refer such performance to the new company."

It appears by the testimony of Mr. Krech that he and Louis Fitzgerald bid in the property of the Union Pacific Railway Company at a foreclosure sale thereof under the first mortgage; that they bid it in for the benefit of the Reorganization Committee, and representing such Committee,—Record, page 498; that at the request of the Committee, and representing such Committee, they assigned their bid to the

defendant company, which company was organized as a part of the plan of reorganization, and by the Reorganization Committee,—Record, pages 498, 499. It also appears by the record that this bid was assigned—Record, page 418—and that, pursuant to said assignment, W. D. Cornish, the Master under the Dexter foreclosure sale, the Receivers, the Trustees of the first mortgage, Krech and Fitzgerald, and the Union Pacific Railway Company, joined in a deed of all of the property and franchises of the Railway Company to the new Union Pacific Railroad Company, organized for the purposes of this reorganization. The articles of incorporation of the new company were introduced in evidence, and will be found in the Record on page 501.

It also appears by the testimony of Alexander Millar, the Secretary of the company, Record, page 514, that Winslow S. Pierce was the first President of the new company; that Alvin W. Krech was the first Vice-President, and that W. D. Cornish was the next Vice-President, and still occupies that position. This was just what it is claimed to be—a reorganization of the Union Pacific Railway Company. Pierce testified that he had full knowledge of all of the proceedings of the Receivership, and the foreclosure, and the Stuht case, wherein the effect of

the Saunders deed was brought in question,—Record, page 514.

It is perfectly evident from this that the new company was a reorganization, and was not freed from any of the obligations imposed upon this property for the benefit of the public, and other railroad companies constructing their lines to the Missouri River at or near Council Bluffs and Omaha. It is perfectly evident that this defendant company does not occupy the position of an innocent purchaser, like one buying a piece of real estate without notice of an unrecorded mortgage or easement. To say that a railroad company, having imposed upon it certain public duties and obligations, can relieve itself of those duties by a reorganization and foreclosure in pursuance of a plan of reorganization like this, is at least an exceedingly radical doctrine.

Louisville Trust Co. v. Louisville, etc., Ry.

In the case of *Louisville Trust Co. v. Louisville, etc., Ry. Co.*, 174 U. S. 674, Mr. Justice Brewer said, pages 683 and 684:

> "We do not stop to inquire, because the question is not presented by this record, whether a Court is justified in permitting a foreclosure and sale which leaves any interest in the mortgagor, to-wit, the railroad company and its stockholders, and ought not always to

require an extinction of all the mortgagor's interest and a full transfer to the mortgagee, representing the bondholders. Assuming that foreclosure proceedings may be carried on to some extent at least in the interests and for the benefit of mortgagee and mortgagor (that is, bondholder and stockholder), we observe that no such proceedings can be rightfully carried to consummation which recognize and preserve any interest in the stockholders without also recognizing and preserving the interests, not merely of the mortgagee, but of every creditor of the corporation. In other words, if the bondholder wishes to foreclose and exclude inferior lienholders or general unsecured creditors and stockholders, he may do so, but a foreclosure which attempts to preserve any interest or right of the mortgagor in the property after the sale must necessarily secure and preserve the prior rights of general creditors thereof. This is based upon the familiar rule that the stockholder's interest in the property is subordinate to the rights of creditors; first of secured and then of unsecured creditors. And any arrangement of the parties by which the subordinate

rights and interests of the stockholders are attempted to be secured at the expense of the prior rights of either class of creditors comes within judicial denunciation."

Authorities.

See also *Northern Pacific Ry. Co., Appellant, v. Abner Townsend*, 23 Sup. Ct. Rep. 671.

*Railroad Co. v. Howard*, 7 Wall. 392.

*Central of Georgia Ry. v. Paul*, 93 Fed. 878.

*Hill v. Gruell*, 42 Ill. App. 411.

*United Water Works Co. v. Omaha Water Co.*, 164 N. Y. 41.

In the Northern Pacific case the Court held that it was not possible for the Railway Company to alienate its property, or to have its property taken by adverse possession, so as to relieve it of its obligations to the public.

## V.

**If there are any illegal clauses in the tripartite agreement of the Saunders deed, they are separate and distinct from the sixth clause under which we claim, and may therefore be disregarded without affecting the validity of the instrument.**

Void clauses do not invalidate whole deed.

Appellant claims that the tripartite agreement contains two illegal agreements, and that they are so intermingled with the sixth subdivision of the agreement as to make the entire instrument void.

The provision of the second clause of the agreement that the eastern terminus of the Union Pacific Railroad shall be and remain in the City of Omaha is probably, so far as it counteracts the provision of Congress that the eastern terminus shall be in Council Bluffs, of no effect. It is not tainted with any immorality such as instruments in violation of the criminal law so as to affect the rest of the instrument. It is simply of no effect and cannot be enforced. Counsel also claims that the third subdivision contains some conditions also in contravention of the Act of Congress because they amount in

substance to the same as the second. We do not see that such is the case, but it is entirely immaterial in this case. The sixth subdivision requires the Union Pacific Railroad Company to allow the trains of all other roads now or hereafter running into or out of Omaha and Council Bluffs, the unobstructed access and transit to and over said bridge and its approaches with their trains, engines and cars.

The question of the location of the eastern terminus of the Union Pacific Railroad bears no relation to this obligation. The obligation to maintain the eastern terminus of the railroad at Omaha is one thing; the obligation to allow the trains of any railroad running into or out of Omaha and Council Bluffs to have unobstructed access and transit to and over said bridge and approaches is a totally distinct thing.

By this clause the people of Omaha undertook to secure by said bridge, its approaches and the depots and tracks connected therewith "the more perfect connection of any railroads that are or shall be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska," as recited in the first recital of the contract. Take plaintiff Company, a railroad constructed to Council Bluffs and desiring to connect with lines built to a point near Omaha, Nebraska; this clause in the contract was

made to cover such a case. Now, it makes no difference to this Company whether the eastern terminus is Council Bluffs or Omaha. If the clause requiring the eastern terminus of the Union Pacific Road to be in Omaha is void, then there is all the more reason why the other should be enforced, so that part at least of the objects to be attained by the gift of $450,000 bonds shall be accomplished.

We may concede for the purpose of this argument that the provisions of sections two and three of this contract are void. We would then come within those cases which hold that where for a legal consideration a party undertakes to perform two acts, one of them lawful and the other unlawful, the contract is good for so much as is lawful and void for the rest of it.

*McCullough v. Virginia*, 172 U. S. p. 115.
*Gelpecke v. Dubuque*, 1 Wallace, 175.
*United States v. Bradley*, 10 Pet. 343.
*W. U. Telegraph Co. v. B. & S. W. Ry. Co.*, 3 McCrary, 136.
*Oregon S. N. Co. v. Winsor*, 20 Wallace, 65.

The rule of law stated by us is so thoroughly settled that it is not open to any serious question. One of the earliest cases upon this subject is the case of the *United States v. Bradley*, in which the opinion

U. S. v. Bradley.

was written by Mr. Justice Story. It was a suit brought upon a bond given to the United States by Hall, who was appointed paymaster of the Rifle Regiment in the army of the United States. It was held that as to some of the conditions of this bond they were without authority of law and void, but as to other conditions they were valid, and that, the valid stipulations being separable from the void stipulations, the bond was good as to those stipulations not in violation of law. The opinion is a careful consideration of the subject and has been accepted from that day to this as an indisputable authority upon this question. Mr. Justice Story said:

> "That bonds and other deeds may, in many cases, be good in part, and void for the residue, where the residue is founded in illegality, but not *malum in se*, is a doctrine well founded in the common law, and has been recognized from a very early period. Thus, in Pigot's case, 11 Co. Lit. 27b., it was said that it was unanimously agreed in 14 Hen. VIII. 25, 26, that if some of the covenants of an indenture or of the conditions indorsed upon a bond are against law, and some are good and lawful, that in this case the covenants or con-

ditions which are against law are void *ab initio*, and the others stand good."

It was contended that this doctrine was not applicable to cases where the illegality arises under a statute, but the Court held that it made no difference whether the bond was partially void by reason of the prohibition of some statute, not *malum in se* or void for the want of authority at common law; that in either case, the conditions and covenants being separable, the bond was only void as to those conditions inhibited by statute. In this case the bond was one instrument containing covenants authorized by law, and others not authorized by law. On this subject Mr. Justice Story said:

> "Upon the whole, upon this point we are of opinion that there is no solid distinction in cases of this sort between bonds, and other deeds containing conditions, covenants, or grants, not *malum in se*, but illegal at the common law, and those containing conditions, covenants, or grants illegal by the express prohibitions of statutes. In each case the bonds or other deeds are void as to such conditions, covenants, or grants which are illegal and are good as to all others which are legal and unexceptionable in their purport. The only ex-

ception is when the statute has not confined its prohibitions to the illegal conditions, covenants, or grants, but has expressly, or by necessary implication, avoided the whole instrument to all intents and purposes."

Oregon Steam Navigation Co. v. Winsor.

The subject again came before the Court in the case of *Oregon Steam Navigation Co. v. Winsor*, 20 Wallace, p. 64. This case is directly in point. In that case it appeared that the Oregon Steam Navigation Co. sued Winsor for damages by reason of the violation of a stipulation not to run a certain steamer in the waters of the Columbia River and its tributaries. The facts were as follows:

The California Steam Navigation Co. in 1864 was engaged in transportation in the California waters. It sold a steamer to the Oregon Steam Navigation Co., engaged in like business on the Columbia River and its branches. There was a covenant that for ten years from May 1, 1864, the Oregon Co. should not run this boat in the rivers and bays of the waters of California. Thereafter the Oregon Co. sold to the defendant Winsor, and Winsor agreed that for ten years from February 18, 1867, he would not run the boat in any of the waters of California or the waters of Columbia River and its branches. Now the Court held that such an agreement was valid

only as to local waters where the boat would be in competition with the grantor's business; in other words, that such an agreement, although in restraint of trade, was not unreasonable when applied to the local community where the grantor was doing business; but when the Oregon Co. sold out to Winsor, he agreed for ten years from 1867 not to run the boat in either the California or the Columbia River waters. As to the three years after the first contract had expired, not to run the boat in California waters, the contract was absolutely void, as in restraint of trade. One of the stipulations of the contract being in restraint of trade, it was claimed the whole contract was thereby made void. This is directly in point in the case at bar. Mr. Justice Bradley, who wrote the opinion, quoted with approval the language laid down by Chitty, as follows:

> "That agreements in restraint of trade, whether under seal or not, are divisible; and accordingly it has been held that when such an agreement contains such a stipulation which is capable of being construed divisibly, and one part thereof is void as being in restraint of trade, whilst the other is not, the Court will give effect to the latter, and will not hold the agreement to be void altogether."

This case was approved in the case of *McCullough v. Virginia*, 172 U. S. 102, opinion by Justice Brewer. In that case it appeared that certain bonds were issued by Virginia, and a contract made to receive the coupons in payment of all taxes, debts, dues and demands due the State. It appeared that as to some of these taxes the agreement was illegal, but Justice Brewer held that as to other of the taxes, the agreements being legal, the contract was therefore divisible, and came within those agreements where, for a legal consideration, a party undertakes to do one or more acts, and some of them are unlawful, the contract is good as to the lawful acts which the party agrees to do, citing with approval *United States v. Bradley*, *supra*, *Gelpecke v. Dubuque*, *supra*, and other authorities.

In the case of the *Western Union Telegraph Co. v. Burlington & Southwestern Ry. Co.*, 3 McCrary, p. 130, it appeared that the Railway Company had made a contract with the Telegraph Company, whereby the companies agreed upon the erection of a telegraph line upon the Burlington system of railways, the Railway Company was to furnish the poles and labor, the Telegraph Company to furnish the wire and instruments, etc. The contract also contained a clause giving to the Telegraph Company the exclusive right

of way for the erection and operation of telegraph lines upon the Railway Company's property. This particular clause was held to be prohibited by the Act of Congress making railroads post roads; but the Court (Circuit Judge McCrary) held that the illegal consideration or covenant could be disregarded, and that the contract would be valid as to its other provisions. The same rule applies to a statute.

*Noble v. Mitchell*, 164 U. S. 367.
*Field v. Clark*, 143 U. S. 649.
*Huntington v. Worthen*, 120 U. S. 97.
*Allen v. Louisiana*, 103 U. S. 80.

Applying these principles to the case at bar, it seems to us that the position of counsel is not well taken. How can the Union Pacific Railway Company come into Court and say: "True, I made an agreement that, in consideration of having received $450,000 of bonds and real estate, I would, first, construct a bridge across the Missouri River; * * * fourth, expend a certain sum in the improvement of the passenger station and depot, and other improvements; fifth, maintain certain machine shops, permanent offices, etc.; sixth, allow any other railway company to run its trains over the bridge and its approaches without discrimination, hindrance, preference or delay; but because I also agreed to make

the Eastern terminus of the road in the City of Omaha, which agreement was rendered void by reason of the Act of Congress requiring the Eastern terminus to be in Council Bluffs, therefore all of my agreements are likewise void." We say that it does not lie in the mouth of the Union Pacific Company, or its successors, to raise this question.

## VI.

Entitled to use of property without discrimination.

**The complainant is entitled to the use of thi property for the same consideration the othe companies pay.**

We do not think the appellant's assignments o error properly raise this question, but we submit th following suggestions:

The covenant in the tripartite agreement co tained in the Saunders deed provides that any oth railroad company shall have the right to use the sa bridge property without discrimination, hindranc preference or delay. This, of course, would give t complainant company the right to use the proper for the same consideration as the Milwaukee a Northwestern Companies, whose contracts we made in May, 1898. See

*St. Paul Union Depot Co. v. Minnesota & W. Ry. Co.*, 47 Minn. 154.

*Chicago, St. Paul & Kansas City Ry. v. Paul Union Depot Co.*, 54 Minn. 411.

*State of Minnesota v. same.* 42 Minn. 144.

Laws of Minnesota, 1879, Chap. 318.

In this case the St. Paul Union Depot Company was organized under the laws of Minnesota, and was granted certain additional powers by the Special Laws of 1879. It provided for the issuance of stock to various railroad companies, and, among other things, any railway company was empowered to "subscribe to the capital stock of the said St. Paul Union Depot Company, or become a stockholder thereof; and upon becoming the owner of such a number of shares of stock as shall be deemed equitable by said board of directors, and upon executing an agreement to conform to its by-laws and regulations, and to pay such charges as are required to be paid by the other railroad companies, any such company is declared to be entitled to elect or appoint one member of the board of directors." Section 4 of the Act provided:

> "There shall be no unjust discrimination against or in favor of any railroad corporation or railroad company using, or desiring to use, the said road, tracks, and union depot of the said St. Paul Union Depot Company, but the terms, conditions and regulations adopted for the same shall be, as far as practicable, uniform, and apply alike to all railroads using, or desiring to use, the said road, tracks, and

Union Depot of the said St. Paul Union Depot Company."

All the other companies were allowed to subscribe for the stock at par. Some years after this the Minnesota & Northwestern Railroad Company (now the Chicago Great Western Railway Company) applied to the Union Depot Company to purchase its quota of stock at par; the Board of Directors refused to allow it to purchase stock at par, claiming that the stock had enhanced in value and was worth $342.86 per share. The Supreme Court of the State of Minnesota said that it was entitled to use the depot without discrimination, and to subscribe for the stock by paying the same consideration as the other companies paid. This is an exceedingly strong case. The opinion was written by Mr. Justice Dickinson, one of the leading Judges of the State, and is so applicable to the case at bar that we invite the Court's attention to the same.

How can the complainant be allowed to use the property without discrimination or preference, if one price is charged it for the use of the identical property, and a much lower price is charged its competitors, the Rock Island, the Milwaukee, the Burlington, and the Northwestern Companies, competing lines between Chicago and Omaha for the

business which the Mason City & Fort Dodge Railroad Company seeks to do? Allowing it to use the property for one price, and charging its competitors a less price, is a direct discrimination and preference not allowed by the terms and conditions of the tripartite agreement. But in the absence of any testimony to the contrary, the contracts made by the defendant company in May, 1898, for 999 years for the use of this same property, is the very best evidence that it is a reasonable consideration.

But we think a reasonable interpretation of the Pacific Railroad Acts requires that company to allow the complainant to use the bridge and tracks for the same compensation as the other companies. It was not claimed in the court below that the compensation was not reasonable. This compensation has been fixed in every contract made by the present company and by the Second Pacific Company. We believe that the contracts made under like circumstances with the other roads for the use of this property are the best evidence of its reasonableness. Furthermore, the Union Pacific Railroad Company is a public carrier. It is required to connect with all the other lines of road reaching the Missouri River at Council Bluffs. In the carriage and transportation of all passengers and freight it would be compelled to give equal rates.

The Supreme Court of the United States in the Rock Island case held that the laws of 1871 and 1866 simply regulated the use of the Union Pacific road for a reasonable compensation. If the Union Pacific Company was to haul a carload of freight for the complainant, it would be obliged to haul it for the same rate it charges other shippers. Is it not the reasonable interpretation of these Pacific Acts that it must permit this user for equal compensation? Would not any other compensation be unreasonable? In fact, evidence that would establish the reasonableness of the rates as to one company would establish it as to all companies. In view of the state of the evidence in this case, there was no error in the decree of the court below permitting the use of this property by the complainant on the same terms as the other companies.

## VII.

**The Mason City Company had ample authority under its charter and Articles of Incorporation to extend its line into the State of Nebraska.**

It is urged by the appellant that the articles of incorporation of the Mason City Company do not authorize it to extend its road into the State of Nebraska. This question was not raised in the Circuit Court, but was raised in the Circuit Court of Appeals, and the opinion of that Court is found on pages 291 & 292, Vol. 3, of the Record. That opinion seems to be so conclusive as to require little support by argument and authority.

Under the laws of the State of Iowa, it is not necessary to specify the route of the line of railroad to be constructed. Railroads are organized under the General Statutes, Sections 1609 & 1610, Statutes of 1897. The articles of incorporation of the Mason City Company provide that:

> "the object of said corporation is to construct, maintain, and operate a railroad from Mason City, in the County of Cerro Gordo, to Fort

Dodge, in the County of Webster, in said State, thence to Lehigh, in said County of Webster, and thence to a point on its line at or near said Lehigh in a southwesterly direction to the City of Council Bluffs, in the County of Pottawattamie, in said State of Iowa, **with such lateral branches from any point on its said line, and such extensions beyond each and every of said points, as the Board of Directors of said corporation may determine upon and designate and the law permit.*"—Record, Vol. 1, pages 163 and 164.

The Statute of Iowa specially authorizes this Company to extend its line into Nebraska. Section 2038 of the Statutes of 1897 is as follows:

"§ 2038. *Extensions.* Any such corporation, organized for the purpose of constructing a railway from a point within the state, may construct or extend the same into or through another state, under such regulations as may be prescribed by the laws of such state and its rights and privileges over said extension in the construction and use thereof, and in controling and applying the assets shall be the same as if its railway was constructed wholly within the state."

*Italics are ours.

The Board of Directors of the Mason City Company duly passed a resolution accepting the terms of the Act of the Legislature of the State of Nebraska entitled "An Act to enable foreign corporations to become domestic corporations of this state," and, pursuant to said Act, filed its articles of incorporation in the State of Nebraska and paid the fees therefor—Record, Vol. 1, pages 150 to 167. It thereby acquired the right to hold and use any interest in property in the State of Nebraska which the laws of Iowa and its articles of incorporation authorized it to acquire.

The Board of Directors of the complainant company, on the 28th day of October, 1902, passed a resolution authorizing its officers to enter into a contract with the Union Pacific Company for the use of the property governed by the decree in this case, and to demand the use thereof, and to enforce said demands by suits against the Union Pacific Company, as might be necessary.—Record, Vol. 1, pages 517 to 520.

It will thus be seen that under the Statutes of Iowa, the Mason City Company was authorized to build or extend its line into or through any other state, under such regulations as may be prescribed by the laws thereof; and its rights and privileges over said extension are the same as if its railroad was

constructed wholly within the state. In other words, if permitted by the laws of Nebraska, it was to have the same rights on any extension that it would have under the laws of Iowa. By adopting the provisions of the Nebraska Statute and filing its articles of incorporation, it complied with the regulations of that state, which enabled it to build or extend its line into Nebraska and to acquire and to hold all necessary property to enable it to operate a railroad in and through that state. The articles of incorporation authorized the Mason City Company to make such extension beyond each and every of said points on its designated line as its Board of Directors should determine. Its Board of Directors, by the resolution of October 22, 1902, did specifically authorize the Mason City Company to demand, and to enforce its demand, for the use of the transportation facilities of the Union Pacific Company between Council Bluffs and South Omaha. This, as the court held below, was a complete compliance with this provision of its articles of incorporation. So that, under the Statutes of Iowa and Nebraska, and under its articles of incorporation, the Mason City Company had ample power to extend its line into Nebraska, by virtue of this arrangement, and to operate its road to South Omaha.

## VIII.

**It was urged in the court below and probably will be here, that the decree should be reversed because the evidence discloses no necessity for the Mason City Company to use the transportation facilities of the Union Pacific Company, as there is another bridge which it can procure the use of.**

Omaha Bridge & Terminal Co.'s bridge and facilities.

Whether there is or not seems to us immaterial. If the Act of Congress and the tripartite agreement created an obligation upon the Union Pacific Company to allow any other railroad company to run its trains over the bridge and tracks, it is immaterial whether it is possible for that company to procure some other line.

It is possible to build a bridge.

It is possible to condemn property in the heart of the City, and to tunnel the big hills around Omaha, and thus reach South Omaha; but, it is to obviate this enormous and ruinous expense and public inconvenience that Congress created this right and that the people of Omaha insisted upon the tripartite agreement.

But it is not true that the Mason City Company

can contract with another company for the use of bridge and terminals. It is true that Mr. Samuel C. Stickney, the General Manager of the Mason City Company, prior to the construction of its line, entered into negotiations with the Omaha Bridge & Terminal Company, but investigation showed the impracticability of the Terminal Company's line and, as soon as Mr. Burt made a proposition for the use of the Union Pacific terminal facilities, these negotiations with the Terminal Company were abandoned and the Mason City Company's line was constructed to connect with the Union Pacific route as shown on complainant's Exhibit 4a. Testimony of Samuel C. Stickney, Record, Vol. 1, pages 359 to 374; A. B. Stickney, 376, 392, 393, and 398 to 402.

After the negotiations with the Terminal Company were dropped, that Company's line and bridge was acquired by the Illinois Central Railroad, and it is not difficult to see that, if we rely upon the good graces of Mr. Harriman for a contract, none could now be entered into with that Company. There is absolutely no testimony that the Mason City Company could procure any such rights over the Terminal Company's bridge and tracks.

Furthermore, that Company has no passenger facilities in Omaha, and the Illinois Central Railroad

(which owns that Company) uses the Union Pacific tracks and depot. Stickney's testimony, Record, Vol. 1, pages 392 & 393.

Neither does that Company's tracks reach the stockyards at South Omaha, but it has a short-time arrangement, running fourteen or fifteen years, for trackage over the Missouri Pacific Company's line.

Furthermore, that Company's line crosses the river some three miles north of the Union Pacific bridge, far from the center of the City, then it follows in a northwesterly direction up a very steep grade onto the bluffs at a point about four miles due north of the Union Pacific bridge and there connects with a line known as the Belt Railroad Line, which follows around into another valley running nearly north and south, which reaches around to the stockyards, making a line about thirteen miles around the City of Omaha that the Union Pacific makes in about six miles. Testimony of Stickney, page 391 of Record. Such an arrangement would be of no value to the Mason City Company and of little value to the people of Omaha.

We have already shown that it is not practical for another road to construct another bridge and tracks through the City of Omaha; that the Union Pacific line with its depots runs through the very

heart of the City of Omaha, lined on each side by large business blocks and dwellings, or it runs through a narrow ravine with hills of impossible grade on each side. See photographs introduced in evidence, on file with the Clerk of this Court, Record, page 143 testimony of George W. Craig, page 121, et seq. and page 134; testimony of A. B. Stickney, 388.

It would appear, therefore, that the equities of the complainant are exceedingly strong.

FRANK B. KELLOGG,
JAMES M. WOOLWORTH,
WILLIAM D. McHUGH,
CORDENIO A. SEVERANCE,
*Solicitors and counsellors for complainant and appellee.*

# APPENDIX A.

It will be noted that by Section eleven of the Act of Congress of 1866 (page 425 of Appendix D), the bridge therein referred to is the one created by the act of Missouri passed February 5, 1864 (page 300 of this Appendix), creating the Saint Louis and Illinois Bridge Company, amended by the Act of February 20, 1865 (page 306 of this Appendix), and "confirmed in its corporate powers under an act of the Legislature of the State of Illinois, approved February sixteenth, eighteen hundred sixty-five" (page 308 of this Appendix).

Note, that the company was incorporated under the laws of Missouri; but this did not give it the right to exist as a corporation and to construct a bridge in the State of Illinois; hence this confirmatory act which is recited in Section eleven of the act of Congress, July 25, 1866.

There is some little confusion growing out of the fact that Section eleven speaks of this confirmatory act of the State of Illinois having been passed in 1864. There was no session of the Legislature in 1864, and the act was in fact passed February 16, 1865.

This act of Congress is printed in the compendium of charters, acts, etc., issued by the bridge company, and Section eleven is therein quoted as follows:

> "Sec. 11. And be it further enacted that the 'St. Louis and Illinois Bridge Company,' a corporation organized under an act of the General Assembly of the State of Missouri, approved February fifth, eighteen hundred and sixty-four, and an act amendatory of the same, approved February twentieth, eighteen hundred and sixty-five, and also confirmed in its corporate powers under an act of the legislature of the State of Illinois, *approved February sixteenth, eighteen hundred and sixty-five*, or any other bridge company organized under the laws of Missouri and Illinois, be and the same is hereby empowered to erect, maintain, and operate a bridge across the Mississippi river, between the city of St. Louis, in the State of Missouri, and the city of East St. Louis, in the State of Illinois, subject to all the conditions contained in said act of incorporation and amendments thereto, and not inconsistent with the following terms and provisions contained in this act; and in case of any litigation arising from any obstruction, or al-

leged obstruction, to the free navigation of said waters, the cause may be tried before the District Court of the United States of any State in which any portion of said obstruction or bridge touches."

We italicize the difference between this act and the act as it appears printed in the Statutes at large. Whether there was a mistake in printing these Statutes, or not, we cannot say. The counsel, in the court below, printed this act as it appears in the compendium, to-wit: "Approved February sixteenth, eighteen hundred sixty-five."

Furthermore, this confirmatory act is published by the bridge company as a part of its charter. It is Section 3 of the act, page 310 of this Appendix, *which requires the company to allow any other railway company to run its cars, locomotives and trains over the bridge.* This is the way the law stood at the time of the passage of the act of Congress, July 25, 1866. Subsequently, the legislature of the State of Illinois passed an act, approved February 21, 1867, page 314 of this Appendix, creating the Illinois and Saint Louis Bridge Company; and, thereafter, the Illinois legislature authorized the consolidation of these bridge companies (Page 319 of this Appendix). On this consolidation, Section 3 of the confirmatory act

of the State of Illinois, of 1865, referred to in Section eleven of the act of Congress, 1866, became a part of the bridge charter, and, subjected the bridge to the right of every railroad to use the same. It appears certain, therefore, that when Congress passed this act of 1866, and provided that the bridge to be built at St. Louis should be "*subject to all of the conditions contained in the said act of incorporation and amendments thereto,*" the Congress secured the right to the use of the bridge to other railroad companies.

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Feb. 5, 1864.

**An Act to incorporate the St. Louis and Illinois Bridge Company.**

*Be it enacted by the General Assembly of the State of Missouri, as follows:—*

Incorporators of St. Louis & Illinois Bridge Co.

Section 1. That Norman Cutter, Joseph Cabot, E. O. Stanard, Edward C. Pike, John H. Lightner, Hugh McKittrick, S. G. Read, Rufus Fitch, George D. Hall, John H. Beach, Chas. Miller, H. A. Doan, John H. Bowen, E. H. Sterling, James H. Wear, James R. Blackman, Clinton O. Dutcher, John H. Siegrist, Wm. D'Oench, C. Reuss, Robert Heinrichshofen, Jabob Woodburn, Chas. F. Meyer, Robert H. Ober, Chauncey I. Filley, B. R. Bonner, Charles H. Howland, and E. H. E. Jameson, and their associates

and their successors, are hereby constituted a body corporate and politic, by the name of the St. Louis and Illinois Bridge Company, for the purpose of constructing a bridge with all machinery, fixtures, toll-houses, and other buildings and erections necessary and proper for the passage of persons and property, over the Mississippi River at the city of St. Louis; and the said company, by their corporate name shall have perpetual succession, and shall be capable in law of purchasing, taking, holding, using, selling, pledging, conveying and disposing of real estate or other property, whether personal or mixed, so far as the same may be necessary for the purposes herein mentioned, may have a common seal; may sue and be sued, plead, and be impleaded, defend and be defended against, contract and be contracted with; may make such by-laws, rules and regulations, appoint such officers, agents, and servants, and generally do all such acts and things, not inconsistent with the laws and Constitution of the State of Missouri and of the United States, as may be requisite and proper for the due execution and management of the work to be done, and for conducting the business of said company.

Purpose.

Sec. 2. All powers of said corporation shall be exercised by a Board of Directors, and such officers

Board of Directors.

and agents as they may elect and appoint. Said Board shall consist of nine Directors, who shall be elected annually by a majority in interest of the stockholders present and voting in person or by proxy, at such time and place as shall be prescribed by the by-laws; and who shall hold their offices until their successors are elected and qualified. Previous to such election the corporators herein named shall constitute the Board of Directors, five of whom shall constitute a quorum to do business. They may, at any time after the passage of this act, cause books to be open for subscriptions to the capital stock of said company, at such time and place and in such manner as may be by them prescribed.

Capital stock.

Sec. 3. The capital stock of said company shall be one million of dollars, which shall be divided into ten thousand shares of one hundred dollars each; and said capital stock may be increased to four millions of dollars. When three hundred thousand dollars shall be subscribed, the corporators shall call a meeting of the stockholders, for the purpose of electing a Board of Directors, at such time and place as they may fix and appoint, of which election thirty days' notice shall be given in two daily newspapers published in the city of St. Louis.

Sec. 4. It shall be lawful for said corporation to borrow money at any rate of interest, and to mortgage the franchises and property; and to issue bonds secured by said mortgage, and to sell the same at any agreed rate of discount; and for railroad corporations, in their corporate capacity, to subscribe to the capital stock of said company.

May borrow money, issue bonds, etc.

Sec. 5. The said company shall have the same power to acquire title to lands necessary for the construction of said bridge, and for the approaches to it from public highways, and the same power to take material from lands in the neighborhood for the construction thereof, and the proceedings therein shall be conducted in the same manner, as is provided in the "Act to authorize the formation of railroad associations and to regulate the same," approved December 13, 1855; and said company shall also have the right to protect the banks of the river above and below the bridge, so far as may be necessary to keep the channel within the opening of the bridge for the passage of vessels, and for that purpose to acquire, condemn, and take lands and material in the manner aforesaid.

May acquire lands necessary, etc.

Protection of river banks.

Sec. 6. The said bridge shall be constructed of stone, iron, and wood, but mainly of iron and stone. The company shall have power to determine, and may

Specifications for construction of bridge.

determine and decide, by a vote of the majority i
interest of stockholders, what kind of a bridge sha
be built—whether suspension, tubular, draw, or oth
erwise; but, whatever kind it may be, it shall be s
constructed as not to obstruct or impede the naviga
tion of the river. If a draw-bridge shall be decide
upon, it shall be built of sufficient capacity for a com
mon wagon way and a foot-passenger way, and may
also be built of sufficient capacity for a railroad track
or tracks for the passage of trains of freight and pas
sengers, with spans not less than two hundred feet in
length over the water, and shall have at least one
draw, with two openings not less than one hundred
feet in width each, for the passage of steamboats or
Attendance and management of bridge.
other vessels. It shall be properly attended and
managed, so as to afford safe and easy passage for all
persons and property; and every railroad train
drawn by steam power shall, on approaching said
Trains shall stop.
bridge, stop its speed and come to a stand-still on the
bank before entering upon the passage of the bridge.
[*Repealed.*]

Tolls:

SEC. 7. When said bridge is completed, the said
company shall be entitled to demand and receive tolls
for crossing the same, and to fix rates of toll, of which
a schedule shall be kept conspicuously posted at each
end of the bridge; which rates, however, shall never

exceed the following, to-wit: For each foot passenger over five years of age, 5 cents; for every person on horseback, 20 cents; for every gig, buggy, or other traveling carriage, drawn by one animal, 40 cents; for every cart or wagon drawn by one animal, 40 cents; for every cart or wagon drawn by two animals, 60 cents; for every cart or wagon drawn by three animals, 80 cents; for every cart or wagon drawn by four animals, 100 cents; for every cart or wagon drawn by more than four animals, 10 cents extra for each animal; for every pleasure carriage drawn by two animals, 60 cents; for every pleasure carriage drawn by three or four or more animals, 100 cents; for each head of cattle, horses, mules, or other animals, 10 cents; for each head of sheep or swine, 3 cents. And should said bridge be built with railroad tracks, the said company is hereby authorized to make such terms and rates with railroad companies, for the passage of trains of freight and passengers, as may be agreed upon between said St. Louis and Illinois Bridge Company, and the said railroad companies; and in case of disagreement the amount of compensation to be paid for passage over said bridge as aforesaid, shall be determined by five referees, two of them to be appointed by each of said corporations, and the fifth by the other four.

for other than railroad trains;

for railroad trains;

in case of disagreement as to compensation.

Taxation.

Sec. 8. For purposes of taxation, all property owned by this corporation shall be taken and deemed as personal property, in the shape of stock in the hands of the stockholders; and the same shall be assessed and taxed as stock only, and the stockholders shall be liable for the amount of their stock.

Inconsistent acts repealed.

Sec. 9. All acts and parts of acts, inconsistent with or repugnant to this act, are hereby repealed.

Sec. 10. This act shall be taken as a public act, and shall be in force from and after its passage.

Approved February 5th, 1864.

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Feb. 20, 1865.

**An Act to amend an Act entitled "An Act to incorporate the St. Louis and Illinois Bridge Company," approved February 5, 1864.**

*Be it enacted by the General Assembly of the State of Missouri, as follows:—*

Section 6 of act of Feb. 5, 1864, repealed.

Section 1. The sixth section of said act is hereby repealed, and the following inserted in lieu thereof: "Section 6. The said bridge shall be built of such materials and upon such plans as the Board of Directors shall decide to be most suitable for the uses required of it; and it shall be of sufficient capacity to accommodate all the different kinds of travel, both common road and railroad travel, as well as foot pas-

sengers, that may require to cross upon it; and it shall be sufficiently high to admit of steamboats, and all other river crafts passing under it at all ordinary stages of the river, when the chimneys, pipes, and other projections are lowered down; and the spans of the bridge between the piers and abutments shall be sufficiently wide to admit of all river crafts being easily navigated through them; the piers shall be so constructed as to obstruct the free flow of the current as little as possible; the approaches to said bridge may pass over all wharves, streets, and other public highways, and may occupy portions of the same, in such manner as to obstruct the same as little as possible. The Board of Directors shall have power to appoint a bridge police, which shall have and exercise upon said bridge and its approaches the same powers as are exercised by the police of the city of St. Louis."

Amended specifications for construction of bridge; attendance of bridge.

Sec. 2. That the following words are and they are hereby added to the fourth section of said act, viz.: "And the city of St. Louis may subscribe for any amount of said stock not to exceed one million of dollars, and the county of St. Louis may subscribe for any amount of said stock not to exceed half a million of dollars, and they may borrow money for that purpose, and may issue bonds for the payment of the

St. Louis may subscribe for stock.

same, which bonds shall be made payable twent years after date, and shall bear interest at a rate no greater than seven per cent per annum.

Substitution of names of incorporators.

Sec. 3. Section first of said act is amended as fol lows: "Strike out the names of Charles Miller, E. G Sterling, James H. Wear, S. G. Read, and John H Siegrist, and insert in lieu thereof, Truman J. Homer Carlos S. Greely, J. D. Barlow, E. W. Fox, and John M. Krum."

Inconsistent acts repealed.

Sec. 4. All acts or parts of acts inconsistent with this act are hereby repealed. This act is to take effect and be in force from and after its passage.

Approved February 20th, 1865.

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Feb. 16, 1865.

**An Act to empower the Persons mentioned in an Act of Incorporation passed by the General Assembly of the State of Missouri, entitled "An Act to Incorporate the St. Louis and Illinois Bridge Company," approved February 5, 1864, to form a Corporation and build a Bridge across the Mississippi River at St. Louis.**

*Be it enacted by the people of the State of Illinois, represented in the General Assembly:—*

May incorporate, construct, etc.

Section 1. That the persons named in the act of incorporation granted by the General Assembly of

the State of Missouri, entitled "An act to incorporate the St. Louis and Illinois Bridge Company," approved February 5, 1864, shall have the right to organize and form a corporation, in accordance with said act, to construct, maintain, and use a bridge, for railroad and other purposes, over that portion of the Mississippi River at the city of St. Louis, within the jurisdiction of the State of Illinois, subject to the conditions, terms, and modifications herein set forth; *provided*, that said bridge shall not be located more than one hundred feet north or south of the dyke or causeway upon which the ordinary travel is now conducted, and which connects Bloody Island, opposite the city of St. Louis aforesaid, with the main Illinois shore.

Location of the bridge.

Sec. 2. Whenever three hundred thousand dollars shall be subscribed, the said persons named in the first section of said act passed by the General Assembly of the State of Missouri, or any five of them, shall call a meeting of the stockholders; and a majority in interest of said stockholders, in accordance with said act, shall elect nine Directors, who shall fix and determine the location of said bridge; and thirty days' notice shall be given of the time and place of such election in two daily papers published in said city of St. Louis, and in one daily or weekly news-

Directors.

paper published respectively in the counties of St. Clair and Madison, in the State of Illinois.

Railroads which now or may hereafter terminate, etc., may cross the bridge.

Sec. 3. Should said bridge be built with railroad tracks, the said company shall suffer and permit the railroad companies whose *termini* are now on Bloody Island, opposite the city of St. Louis aforesaid, or which may hereafter terminate there, to cross upon said bridge with their cars, locomotives, and trains, upon such terms and rates as may be agreed upon between the St. Louis and Illinois Bridge Company and the said railroad companies; and in case of disagreement as to the amount of compensation to be paid for passage as aforesaid, the same shall be determined by five referees, two of whom shall be appointed by each of said corporations, and the fifth shall be appointed by the four referees; and in case said companies can not agree as to said referees, or if either party shall fail or refuse to make such appointment, either party may apply to the Judge of the St. Clair County Circuit Court, upon giving to the opposite party ten days' notice in writing of such intended application, for the appointment of five referees to fix said compensation, and he shall have full powers to make such appointment for the party refusing to appoint referees as hereinbefore provided; and the said referees so appointed shall have power

In case of disagreement as to compensation.

to fix and determine said compensation, and shall furnish a copy of their award to each of the parties; and either party may appeal from such decision to the St. Clair County Circuit Court of the State of Illinois, according to the laws regulating appeals from justices of the peace and may also appeal to the Supreme Court, under the laws of the State of Illinois, *provided*, that any such appeal shall not affect the right of any railroad company to pass over said bridge during the pendency of such appeal, if the compensation fixed by said referees shall be duly tendered; *and provided further*, [that] in case said St. Louis and Illinois Bridge Company hinder or prevent any such railroad company from the use of said bridge upon tender of the compensation fixed as aforesaid, the said St. Louis and Illinois Bridge Company shall forfeit all rights and privileges under this charter.

Disagreement shall not affect right of railroad to pass over, during pendency, etc.

Sec. 4. *And be it further enacted*, that any railroad company whose terminus is now on Bloody Island aforesaid shall have power of becoming incorporated in said bridge company, and to take and subscribe, or acquire by subsequent purchase, stock not to exceed one-sixth part of the capital stock of said Bridge Company which may be created from time to time, either by subscription or purchase;

Railroad companies terminating at Bloody Island may acquire stock.

whenever such railroad company shall, by an order of its Board of Directors, make an order to that effect, and subscribe and secure to be paid the amount necessary, it shall be deemed in law an incorporator in said company hereby chartered to such an extent, and shall have and enjoy all the rights belonging or appertaining thereto.

May acquire lands for construction, and approaches.

Sec. 5. The said company shall have power to acquire title to all lands necessary for the construction of said bridge, and for the approaches thereto from railroad and highways; and the said company shall also have the right to protect the banks of the river above and below the bridge, so far as may be necessary to keep the channel within the opening of the bridge.

May condemn lands necessary, etc.

Sec. 6. The said company shall have power to condemn, under the laws of the State of Illinois, all such lands and other property as may be necessary for the construction of said bridge and the approaches thereto from railroads and other public highways, and also all such lands and property as

Protect river banks.

may be necessary and proper to protect the banks of said river above and below said bridge; *provided always*, that no lands shall be condemned for bridge purposes or other purposes, before mentioned, which have already been condemned or acquired for the use

of any railroad terminating on Bloody Island aforesaid.

May borrow money, issue bonds, etc.

Sec. 7. Said corporation may borrow money at any rate of interest, and may mortgage their franchises and property and issue bonds secured by said mortgage, and sell the same at any agreed rate of discount.

Shall not discriminate in fixing toll rates.

Sec. 8. The said company shall not make any discrimination or exercise any partiality in fixing the rates for carrying persons or freight or trains over said bridge, but the same shall be just, equal, and uniform, as to all persons and corporations; and in case of violations of this section the person or corporation aggrieved shall have the right to recover from the company three times the amount so improperly charged, before a justice of the peace where the amount is under one hundred dollars, and in the Circuit Court when the amount is over that sum.

Stockholders' liability.

Sec. 9. The stock of this company shall be deemed as personal property, and the stockholders shall only be liable to the creditors of said company to an amount equal to the amount of stock held by them respectively.

Sec. 10. This act shall be deemed and taken as a public act, and be in force from and after its passage.

Approved February 16, 1865.

Feb. 21, 1867.

## An Act to Incorporate the Illinois and St. Louis Bridge Company.

*Be it enacted by the people of the State of Illinois, represented in the General Assembly:—*

Incorporators of Illinois & St. Louis Bridge Co.

Section 1. That Joseph Gillespie, John M. Palmer, Jesse K. Dubois, William Shepard, John Williams, William R. Morrison, L. A. Parks, Levi Davis, T. B. Blackstone, H. C. Moore, Peter H. Willard, R. P. Tansey, Gustavus A. Koerner, C. P. Heaton, L. B. Boomer, Fred. T. Krafft, L. B. Parsons, John Baker, A. H. Lee, and their associates, successors, and assigns, be and are hereby created a body corporate and politic, under the name and style of the

Purpose.

Illinois and St. Louis Bridge Company, for the purpose of constructing and maintaining a toll-bridge, from any point or place on the Mississippi River opposite to the city of St. Louis, to the western line of this State, with suitable approaches to such bridge, and all convenient appendages and structures for the same.

The said Company shall have the power to make and use a common seal, and the same to alter and renew at pleasure, and such other powers, rights, privileges and immunities as may be necessary or useful for the purpose of this act; *provided*, that

there shall be at least fifty thousand dollars expended during the year 1867 in the construction of said bridge.

Capital stock.

Sec. 2. The capital stock of said Company shall be one million dollars, and be divided into shares of one hundred dollars each; and may be increased from time to time, as a majority of the stockholders may direct, and shall be issued and transferred in such manner, and under such conditions as the Directors of said Company shall, by the by-laws thereof, prescribe.

Board of Directors.

Sec. 3. The corporate powers of said Company shall be vested in and exercised by a Board of Directors, consisting of such number of persons, not less than three nor more than thirteen, as the stockholders of said Company may from time to time direct. The said Directors shall be chosen by the stockholders at such time and place as may be fixed by the by-laws of said Company, and shall hold their offices for one year, and until their successors are elected and qualified. They shall elect one of their number President of the said Company, and may fill any vacancy in the said board, occasioned by death, resignation, or otherwise, for the unexpired portion of the term of office so becoming vacant, and may make such rules, by-laws, and regulations, and appoint

such officers and servants, as they may from time to time deem expedient; *provided*, that at least one-half of the Directors shall be residents of the State of Illinois.

Stock subscription books.

Sec. 4. The persons named in the first section of this act are hereby appointed Commissioners, who, or a majority of them, are authorized to open, or cause to be opened, subscription books for the stock of said Company, at such time and place within or without this State as they may think proper; and when three hundred thousand dollars shall be subscribed, the said Commissioners, or any three of them, may call a meeting of the stockholders, by giving ten days' notice in some newspaper published in St. Louis, or personal notice to each of the stockholders, of the time and place of such meeting; and at the same the stockholders may elect Directors and transact other business. Stockholders' meetings may be held without as well as within the State.

May transport over bridge or allow others to.

Sec. 5. The said corporation may transport on said bridge and approaches thereto persons and property by steam or otherwise, and may allow others so to do; and said bridge and approaches may be used for every description of travel, passage, and transportation, under such rules and regulations, and for such tolls as the Directors of the said corporation

may prescribe. The said corporation may take, receive, and collect such tolls for travel, passage, or transportation over said bridge and approaches, or either of them, or any part of either of them, as its Directors may from time to time fix and establish; *provided*, the rates charged for ordinary travel shall never exceed the following, to wit: for each foot passenger over five years of age, five cents; for every person on horseback, twenty cents; for every gig, buggy, or other traveling carriage, drawn by one animal, forty cents; for every cart or wagon drawn by one animal, forty cents; for every cart or wagon drawn by two animals, sixty cents; for every cart or wagon drawn by three animals, eighty cents; for every cart or wagon drawn by four animals, one hundred cents; for every cart or wagon drawn by more than four animals, ten cents extra for each animal; for every hundred pounds of freight over two thousand pounds, five cents; for every pleasure carriage drawn by two animals, sixty cents; for every pleasure carriage drawn by three or four or more animals, one hundred cents; for each head of cattle, horses, mules, or other animals, ten cents; for each head of sheep or swine, five cents.

Toll rates.

Sec. 6. The said corporation shall have power to acquire title to lands necessary for the construction

May acquire lands necessary, etc.

of said bridge and approaches, and the same power to take materials from lands in the vicinity for the construction and maintenance thereof; and for such purposes shall have and may exercise all the powers conferred by any of the laws of this State for acquiring right of way for railroads, public roads, or other public uses, under which the said corporation may take and acquire property, heretofore taken or acquired for such uses, as well as other property.

Exclusive right for 25 years.

The said corporation shall have the exclusive right for twenty-five years of constructing a bridge, opposite to the said city of St. Louis (in the county of St. Clair), over so much of said river as is within the jurisdiction of this State, and shall also have the right to protect the banks of the same so far as may be necessary to keep the channel within the opening of the bridge, and for that purpose may take and acquire lands and materials in the manner aforesaid; *provided*, if the bridge herein authorized is not commenced in two years, and completed in five years, this act shall be null and void.

Railroad companies, cities, etc., may purchase stock.

Sec. 7. Any railroad company, town, city, or county, shall have power to take and subscribe for and to purchase and hold stock of said Company, and may make such contracts and execute such securities or other instruments as said railroad companies,

towns, cities, or counties, may deem expedient relative to such subscription or purchase, or to the construction or uses of said bridge.

May consolidate with Missouri company.

Sec. 8. The said corporation may consolidate its property and franchise with the property and franchises of any bridge company authorized by the laws of Missouri to construct a bridge, so as to connect with the one herein authorized, and for that purpose the said corporation may make and execute all such agreements as it may deem expedient; and after such consolidation, the corporation created thereby shall have all the power herein granted.

May borrow money, issue bonds, etc.

Sec. 9. The said corporation may borrow money at any rate of interest, and issue its bonds or other evidences of its indebtedness bearing such rate of interest, and payable at such time or times, and at such place or places, as its Directors may think proper; and may secure such bonds or other indebtedness by mortgage or deed of trust of the property, tolls, and franchises in such manner as said Directors may think fit, and may sell such bonds or other evidences of indebtedness at any rate of discount agreed upon by said Directors.

Sec. 10. This act shall be deemed a public one, and shall take effect from and after its passage.

Approved February 21st, 1867.

March 19, 1868.

**An Act to authorize the consolidation of the St. Louis and Illinois Bridge Company with the Illinois and St. Louis Bridge Company.**

Preamble.

*Whereas*, The stockholders of the St. Louis and Illinois Bridge Company, a corporation organized under an act of the General Assembly of the State of Missouri, entitled, "An Act to incorporate the St. Louis and Illinois Bridge Company," approved February 5, 1864, and an act amendatory thereto entitled, "An act to amend an act entitled, 'An Act to incorporate the St. Louis and Illinois Bridge Company,'" approved February 5, 1864, which last act was approved February 20, 1865, and the stockholders of the Illinois and St. Louis Bridge Company, a corporation organized under an act of the General Assembly of the State of Illinois, entitled, "An act to incorporate the Illinois and St. Louis Bridge Company," approved February 21, 1867, have agreed to consolidate and amalgamate the said corporations; therefore,

*Be it enacted by the General Assembly of the State of Missouri, as follows:—*

May consolidate; name to be Illinois & St. Louis Bridge Co.

Section 1. The said St. Louis and Illinois Bridge Company is hereby authorized to form such consolidation with the said Illinois and St. Louis Bridge Company in such manner and upon such terms as the

said St. Louis and Illinois Bridge Company shall deem proper; and, when so consolidated, to take the corporate name of and be known as the Illinois and St. Louis Bridge Company.

Powers and privileges.

Sec. 2. When said consolidation shall be effected the said consolidated company shall thereby and thenceforth be clothed with all the powers and privileges granted to the said St. Louis and Illinois Bridge Company by the acts before mentioned.

Recording.

Sec. 3. When said consolidation shall be effected, the secretary of the said consolidated company shall file in the office of the Recorder of Deeds of the county of St. Louis, a certificate that the said companies have effected the consolidation authorized by the act, which certificate, or record thereof, shall be taken in all courts as conclusive proof of such consolidation.

Sec. 4. This act shall take effect from and after its passage.

Approved March 19, 1868.

March 24, 1873.

**An Act to authorize the Consolidation of Bridge Companies, organized under the Laws of this State with similar Companies organized under the Laws of an adjoining State.**

*Be it enacted by the General Assembly of the State of Missouri, as follows:—*

Authorizing consolidation.

Section 1. Any corporation or company now existing under general or special laws, or which may hereafter be created, whose object and business are the construction of a railway or a highway bridge, or both, over and across any river, the middle of the main channel of which at the point at which it is proposed to construct such bridge, is the boundary line between this State and some adjoining State, may unite and consolidate with a similar corporation or company organized in accordance with the laws of such adjoining State for the object and purpose of constructing a similar bridge at the same point, and the two companies form one consolidated company holding and enjoying all the rights, privileges, powers, franchises, and property belonging to each; and under such corporate name as they may adopt or agree upon such consolidation, shall be made by agreement in writing by or under the authority of the Board of Directors and the assent of the owners

of at least three-fourths of the capital stock of each of said corporations or companies, and a certificate of the fact of such consolidation with the name of the consolidated company, shall be filed and recorded in the office of Secretary of State; *provided*, that no such consolidation shall in any manner affect or impair the rights of any creditor of either of said companies or corporations; *and provided further*, that companies or corporations so consolidating, shall accept the provisions of this act. Such agreement may provide for the number of Directors of any such consolidated corporation not exceeding thirteen, provided that nothing herein contained shall be construed as a relinquishment by this State of the right to legislate relative to such consolidated company so far as the territory or interest of this State may be affected thereby at any time, or to exempt such consolidated company from being amenable to the laws of this State.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved March 24, 1873.

July 1, 1872.

**An Act in Relation to Bridges across Rivers on the Borders of this State. Approved March 19, 1872. In force July 1, 1872.**

*Be it enacted by the people of the State of Illinois, represented by the General Assembly:—*

Each and every corporation created by the laws of this State prior to the adoption of the new constitution, for the purpose of building bridges across the Mississippi River or other navigable streams on the borders of this State, and which shall have commenced, but shall have failed to complete the construction of its bridge within the time limited in its charter, is hereby allowed and is invested with full power and authority to proceed in the construction of its said bridge and complete the same, anything in its charter to the contrary notwithstanding.

Time limit extended in which to construct bridge.

*Provided*, however, that the same shall be constructed and completed within ten years from and after the passage of this act. *And provided further*, that such corporation shall have been organized and been in operation within 10 days from the time the new constitution took effect.

Approved March 19th, 1872. In force, July 1st, 1872.

# APPENDIX B.

**List of United States Statutes granting the right to construct Bridges across Navigable Waters, containing Clauses requiring their use by all Railway Companies, passed between 1866 and the present time.**

A careful perusal of these statutes, from the time franchises were first granted for the erection of bridges over large, navigable streams for the purpose of railway travel, shows a general public policy to require that all such bridges shall be subject to the use of any railway companies which may desire to run their trains over the same for the purpose of making connections between railroads reaching the opposite side of said rivers.

We shall not in this appendix quote the language in all the said statutes; they vary, but accomplish the same object. We will, however, quote the language of a few, granted between 1866 and 1882.

The first act is that of July 25, 1866. By it a railway corporation is authorized to build a bridge over the Mississippi River at Quincy, Ill., over which

railway tracks were to be laid "for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed **all trains of all roads terminating at said river at or opposite said point shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge.**" In this same act and subject to the above limitation, franchises for bridges were granted to railway corporations to bridge the Mississippi at Hannibal, Mo., at St. Louis, Mo., at Keokuk, Ia., at Dubuque, Ia., at Prairie due Chien, Wis., at Winona, Minn., and to bridge the Missouri at Kansas City, Mo. (14 St. 244.)

On February 21, 1868, an Act was approved authorizing a railroad corporation to cross the Mississippi by constructing a bridge at La Crosse, Wis., subject to the conditions of the Act of July 25, 1866. Its language is that the railroad company "is hereby authorized to construct and operate a railroad bridge * * * subject to all the terms, conditions, restrictions and requirements and entitled to all the privileges named in an Act approved July 25, 1866, entitled "An Act to authorize the construction of certain bridges, and to establish them as post roads." (15 St. 37.)

On the 20th of July of the same year the Kansas & Missouri River Bridge Company was authorized to build a bridge across the Missouri upon or near the military reservation of Fort Leavenworth, and providing "that when constructed all roads terminating at the Missouri River, at or near the location of said bridge, shall be allowed to cross said bridge for a reasonable compensation to be paid to the owners thereof." And by the same Act the St. Joseph & Kansas City Railroad Company was authorized to build a bridge over the same river at St. Joseph, with all the rights and privileges and subject to all the restrictions, limitations and conditions contained in the Act relating to the Kansas & Missouri Bridge Company. (15 St. 121.)

On the same day another Act was passed authorizing the St. Louis & Illinois Bridge Company to construct a bridge in conformity with the Act of 1866. (15 St. 123.)

On July 27, 1868, a railway corporation was authorized to bridge the Potomac at Georgetown. It was especially provided in this Act that no one railway should have the exclusive right to operate and run trains across said bridge, but that any privilege granted to one corporation should be extended to all

who make application for such privilege, on equal terms. (15 St. 231.)

On the 30th of June, 1870, an Act was passed authorizing the construction of a bridge across the Niagara with this provision: "And all railway companies desiring to use the said bridge shall have and be entitled to equal rights and privileges in the passage of the same and in the use of the machinery and fixtures thereof, and of all the approaches thereto." (16 Stat. 173.)

On July 14, 1870, a railway company was authorized to build a bridge across the Missouri River at or near St. Joseph, Mo., subject to the limitations of the Act of July 25, 1866. (16 St. 275.)

On the 1st of July of that year, the Citizens' Bridge Company was authorized to build a bridge across the Arkansas, at Little Rock, with this provision, "All trains of all roads terminating at the Arkansas River at or near the location of said bridge shall be allowed to cross the bridge for a reasonable compensation to be paid to the owners thereof." (16 St. 185.)

On the 3rd of March, 1871, a bridge was authorized over the Mississippi, at the City of Louisiana, in which it was provided that all Railway Companies desiring to use the said bridge shall have and be en-

titled to equal rights and privileges in the passage of the same. This same act also authorized a bridge at Glasgow, Mo., over the Missouri River, subject to the same provisions of the Act. (16 St. 473.)

On the 3rd of March of the same year, a bridge across the Wabash was authorized in which it was provided "that all Railway Companies desiring to use said bridge, shall have and be entitled to equal rights and privileges in the passage of the same." (16 St. 599.)

On February 24, 1871, the Union Pacific R. R. Co. was authorized to construct a bridge across the Missouri River at Omaha, subject to the provisions of the Act of July 25, 1866. (16 St. 430.)

On March 5, 1872, the St. Joseph Bridge Building Company was authorized to cross the Missouri River at St. Joseph, Mo., and to lay on and over the bridge railway tracks for the more perfect connection of any and all railroads that are now or which may hereafter be constructed to the Missouri River at or near St. Joseph, and it was provided that all trains of all railroads might use said bridge. (17 St. 33.)

On May 1, 1872, this last Act was amended, so that the St. Joseph Bridge Building Company, *or its assigns*, might construct the said bridge, and to lay

on and over said bridge railway tracks for the more perfect connection of any and all railroads that are now or which may hereafter be constructed to the Missouri River at or near St. Joseph, and all railroads were allowed to use said bridge. (17 St. 58.)

On April 1, 1872, the Chicago, Burlington & Quincy R. R. Co. was authorized to build a bridge to cross the Mississippi River at Clinton, Ia., for the more perfect connection of any railroads that are or shall be constructed to the said river. All railroad companies were authorized to use this bridge. In this same act a bridge was authorized at Muscatine, Ia., and another to cross the Mississippi River between the Counties of Carroll and Whitesides in Illinois and the Counties of Jackson and Clinton in Iowa, subject to the provisions of this Act. A bridge was also authorized at La Crosse, Wis., to cross the Mississippi River, subject to the provisions of this Act. (17 St. 44.)

On May 11, 1872, the Boonville Railroad Bridge Company was authorized to build a bridge to cross the Missouri River at Boonville, Mo., and to lay on or over said bridge railroad tracks for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point.

All railroad companies were to have equal rights in the passage of the bridge. (17 St. 99.)

On May 17, 1872, the Western Illinois Bridge Company was authorized to bridge the Mississippi River at Quincy, Ill., over which all railway companies were to have equal rights. This same act authorized a bridge over the Mississippi River at Alexandria, Mo., subject to the provisions of the said Act. (17 St. 120.)

On May 25, 1872, any company of persons or a corporation was authorized to build a bridge across the Mississippi River at Fort Madison, Ia., over which all railway companies were to have equal rights. (17 St. 160.)

On May 31, 1872, the Little Rock Bridge Company was authorized to build a bridge across the Arkansas River at Little Rock, Arkansas, over which all trains were to have equal rights. (17 St. 193.)

On June 4, 1872, the Davenport & St. Paul Railroad Company was authorized to cross the Mississippi River at Rock Island, Ill. All other railroad companies were authorized to use this bridge. (17 St. 220.)

On June 4, 1872, a bridge was authorized to be built across the Missouri River at Nebraska City, which was to be for the use of all railroad companies,

and on the same date the Brownville, Ft. Kearney & Pacific Ry. Co. were authorized to build a bridge across the Missouri River at Brownville, Neb., over which all railroads might have passage and equal rights. (17 St. 222, 223.)

On the 10th of June, 1872, a bridge was authorized at Red Wing, Minn., over which all railway companies had equal rights. (17 St. 379.)

On February 27, 1873, the Northern Pacific Railway Company was authorized to construct a bridge across the St. Louis River at Rice's point, Minnesota, and all railroad companies were to have equal rights to use the bridge. (17 St. 477.)

On March 3, 1873, the St. Clair & Carondelet Bridge Company was authorized to construct a bridge across the Mississippi River near St. Louis, over which all railway companies were to have equal rights. (17 St. 616.)

On March 3, 1873, a bridge was authorized to cross the Missouri River at Lexington, Mo., over which all railway companies were to have equal rights. (17 St. 627.)

On the same day a bridge was authorized to cross the Ouachita River in Arkansas, over which all railway companies were to have equal rights. (17 St. 630.)

On June 6, 1874, the Milwaukee & St. Paul Railway Company was authorized to maintain a bridge at Prairie du Chien, Wis., and another at Clinton, Ia., over which all railway companies were to have equal rights. (18 St. 62.)

On June 22, 1874, the Milwaukee & St. Paul Ry. Co. was authorized to construct a bridge at La Crosse, Wis., subject to the provisions of the Act of April 1, 1872. (18 St. 197.)

On March 3, 1875, a bridge was authorized to cross the Mississippi River at Dubuque, Ia., subject to the limitations of the Act of June 6, 1874. (18 St. 522.)

On July 6, 1876, a bridge was authorized at La Crosse, subject to the provisions of the Act of June 6, 1874. (19 St. 76.)

On July 8, 1876, a bridge was authorized across the Missouri River at Nebraska City, over which all railroad companies were to have equal rights. (19 St. 76.)

On August 15, 1876, a bridge was authorized to cross the Missouri River at Sioux City, Ia., over which all railroads were to have equal rights. (19 St. 205.)

On March 13, 1878, a bridge was authorized at Glasgow, Mo., over which all railway trains were to have equal privileges. (20 St. 29.)

On July 3, 1882, the St. Louis & San Francisco Railway Company was authorized to construct a bridge across the Arkansas River at Van Buren, Ark., over which all railway trains were to have equal privileges. (22 St. 144.)

On April 26, 1882, a bridge was authorized to cross the Mississippi River at Keithsburg, Ill., over which all railways were to have equal privileges. (22 St. 50.)

On March 28, 1882, the Chippewa Valley & Superior Railway Company was authorized to build a bridge at Read's Landing, Minnesota, over which all railway companies were to have equal rights. (22 St. 34.)

On July 3, 1882, the Rock Island & Southwestern Railway Company was authorized to construct a bridge to cross the Mississippi River at New Boston, Ill., over which all railway companies were to have equal rights. (22 St. 146.)

On August 8, 1882, the Upper Iowa & Mississippi River Railway Company was authorized to build a bridge to cross the Mississippi River at Victory, Wis., over which all railway companies were to have equal privileges. (22 St. 372.)

On April 1, 1882, the Hannibal & Southwestern Railway Company was authorized to construct a bridge to cross the Missouri River at Arrow Rock, Mo., over which all trains were to have equal privileges. (22 St. 38.)

On June 27, 1882, the Sioux City and Pacific Railroad Company was authorized to build a bridge to cross the Missouri River, over which all railway companies were to have equal rights. (22 St. 112.)

On July 12, 1882, the New Orleans & N. W. R. R. Co. was authorized to construct a bridge to cross the East Pearl River, over which all railway companies were to have equal rights. (22 St. 166.)

By an Act approved August 1, 1882, a bridge was authorized to cross the St. Lawrence River, over which all trains were to have equal rights. (22 St. 390.)

On July 7, 1882, the Sault Ste. Marie Bridge Company was authorized to build a bridge across the Sault Ste. Marie River, over which all railway companies were to have equal rights. (22 St. 154.)

July 8, 1882, bridges were authorized over several rivers in the States of Florida and Georgia, over which all railways were to have equal rights. (22 St. 156.)

Other Bridge Acts containing similar clauses:

Apl. 14, 1882, At St. Charles, Mo.....22 St. 44

June 27, 1882, Over White River in Arkansas .....22 St. 109

June 12, 1884, Over Missouri in Nebraska .....23 St. 43

June 18, 1884, Over Missouri at Leavenworth, Kansas.....23 St. 50

July 5, 1884, Over Missouri at White Cloud, Kansas.....23 St. 113

Jan. 21, 1885, Over Mississippi at Hastings, Minn. .....23 St. 285

Feb. 26, 1885, Over Mississippi at Memphis, Tenn. .....23 St. 333

Mar. 3, 1885, Over Mississippi at Davenport, Iowa .....23 St. 443

Apr. 15, 1886, At Alton, Illinois.....24 St. 10

May 15, 1886, At Keithsburg, Illinois...24 St. 25

May 15, 1886, Across Illinois and Des Moines Rivers .....24 St. 27

May 15, 1886, At Winona, Minnesota...24 St. 47

May 17, 1886, At Atchison, Kansas.....24 St. 64

May 17, 1886, At Red Wing, Minnesota..24 St. 59

May 17, 1886, At Clay and Jackson Counties, Missouri.....24 St. 58

May 17, 1886, At Chamberlain, South Dakota .....24 St. 67
May 17, 1886, At Saline City, Missouri..24 St. 62
May 17, 1886, At Pierre, S. D.....24 St. 65
May 17, 1886, At Pottawattamie Co., Ia..24 St. 55
May 17, 1886, At St. Charles, Mo.....24 St. 60
July 10, 1886, At St. Joseph, Mo.....24 St. 138
July 19, 1886, At Dubuque, Ia.....24 St. 144
July 29, 1886, Over Tennessee and Cumberland Rivers .....24 St. 165
Feb. 3, 1887, At St. Louis, Mo.....24 St. 375
Mar. 3, 1887, At Keokuk, Ia., or Fort Madison, Ia. .....24 St. 564
Mar. 3, 1887, At Grand Tower, Ill.....24 St. 546
Mar. 3, 1887, At Sibley, Mo.....24 St. 493
Mar. 3, 1887, At Omaha, Neb.....24 St. 501
Mar. 3, 1887, At Pierre, S. D.....24 St. 561
Mar. 3, 1887, At Yankton, S. D.....24 St. 562
May 15, 1886, Over Yellowstone at Miles City, Mont. .....24 St. 48
May 15, 1886, Over Illinois and Des Moines Rivers .....24 St. 27
May 17, 1886, Over Missouri at Atchison .....24 St. 64
June 16, 1886, Over Staten Island Sound, N. Y. .....24 St. 78

July 29, 1886, Over Tennessee River at Aurora, Tenn. .....24 St. 165

July 29, 1886, Over Willamette River, at Salem, Oregon .....24 St. 163

July 29, 1886, Over Willamette River, at Oregon City, Oregon...24 St. 164

Jan. 3, 1887, Over St. Louis River near Duluth, Minn. .....24 St. 356

Feb. 21, 1887, Over Tradewater River, Ky. .....24 St. 407

Mar. 3, 1887, Over Coosa River in Alabama .....24 St. 502

Mar. 3, 1887, Over East River, N. Y.....24 St. 468

Mar. 3, 1887, At Alexandria, La.....24 St. 508

Mar. 3, 1887, Over Red River near Crookston, Minn. .....24 St. 475

Mar. 3, 1887, Over Red River near Grand Forks, N. D.....24 St. 470

Mar. 3, 1887, Over Tennessee at Guntersville, Ala. .....24 St. 566

Mar. 3, 1887, Over Tennessee at Mussel Shoals, Ala. .....24 St. 633

Mar. 3, 1887, Over Tennessee at Sheffield, Alabama .....24 St. 558

Feb. 17, 1888, Over Missouri near St. Charles, Mo. .....25 St. 34

Feb. 18, 1888, Over Missouri near Lexington, Mo. .....25 St. 39
Apl. 4, 1888, Over Ouachita and Saline, Arkansas .....25 St. 76
Apl. 9, 1888, Over St. Mary's, Satillo and Crooked, Ga. and Fla. .....25 St. 82
Apl. 24, 1888, Over Mississippi at Memphis, Tenn. .....25 St. 92
May 1, 1888, Over Red and Little, Ark..25 St. 105
May 14, 1888, Ohio Connecting Ry. Bridge .....25 St. 139
May 14, 1888, Over Tennessee, Tenn....25 St. 144
May 14, 1888, At Little Rock, Ark.....25 St. 145
June 16, 1888, Over Cape Fear, Black and North East, N. C...25 St. 171
June 6, 1888, Over Kentucky and Tributaries .....25 St. 172
June 9, 1888, Over Tennessee at Chattanooga .....25 St. 179
June 9, 1888, Over Tennessee at Guntersville, Ala. .....25 St. 180
June 19, 1888, Over Mississippi at Hickman, Ky. .....25 St. 195
June 22, 1888, Over Missouri at Omaha, Neb. .....25 St. 198

June 25, 1888, Over Tennessee at Knoxville, Tenn. .....25 St. 204
June 29, 1888, Over Red River of the North .....25 St. 212
June 29, 1888, Over Red River of the North .....25 St. 214
July 9, 1888, Over Cumberland, Ky....25 St. 242
July 9, 1888, Over Snake and Clear Water .....25 St. 244
July 16, 1888, Over Ouachita in Arkansas .....25 St. 295
July 16, 1888, Over Columbia, between Washington and Oregon .....25 St. 296
July 16, 1888, Over Red River of the North .....25 St. 298
July 16, 1888, Over Mississippi at Oquawka, Ill. .....25 St. 299
July 16, 1888, Over Tennessee in Alabama .....25 St. 301
July 16, 1888, Over Caney Fork in Tennessee .....25 St. 302
July 16, 1888, Over Mississippi at Clinton, Iowa .....25 St. 303
July 16, 1888, Over Mississippi at Muscatine, Iowa .....25 St. 305

July 16, 1888, Over Bayou D'Arbonne, Louisiana .....25 St. 307
July 16, 1888, Over Missouri at Nebraska City, Nebraska .....25 St. 309
July 16, 1888, Over Tombigbee in Alabama .....25 St. 311
July 17, 1888, Over Missouri .....25 St. 312
July 19, 1888, Over Mississippi at Natchez, Mississippi ...25 St. 334
July 19, 1888, At Fort Smith, Arkansas.25 St. 337
July 23, 1888, Over Missouri in Missouri 25 St. 341
July 24, 1888, Over Arkansas at Cumming's Landing, Ark...25 St. 343
Aug. 6, 1888, Over Mississippi at Burlington, Ia. .....25 St. 360
Aug. 6, 1888, Over Missouri in Montana 25 St. 363
Aug. 6, 1888, Over Missouri at Forest City, Dakota .....25 St. 365
Aug. 6, 1888, Over Missouri near Winona, Dakota .....25 St. 367
Aug. 6, 1888, Over Tennessee at Lamb's Ferry, Alabama .....25 St. 369
Aug. 6, 1888, Over Hillsborough, Florida .....25 St. 370
Aug. 6, 1888, Over Halifax at Daytona, Florida .....25 St. 372

Aug. 6, 1888, Over St. John's in Florida 25 St. 373
Aug. 6, 1888, Over Oostanaula at Rome, Georgia .....25 St. 374
Aug. 6, 1888, Over Bayou Bartholomew, and Ouachita, Red, Little and Sabine, in Louisiana .....25 St. 375
Aug. 6, 1888, Over Chattahoochee in Georgia .....25 St. 378
Aug. 6, 1888, Over Flint and Chattahoochee .....25 St. 380
Aug. 7, 1888, Over Missouri .....25 St. 385
Aug. 9, 1888, Over Tennessee at Knoxville, Tennessee .....25 St. 394
Aug. 9, 1888, Over Oconee in Georgia...25 St. 395
Aug. 9, 1888, Over Missouri at Plattsmouth, Nebraska .....25 St. 396
Oct. 9, 1888, Over Kentucky and tributaries .....25 St. 548
Oct. 12, 1888, Over Missouri near mouth of Kansas River .....25 St. 555
Dec. 10, 1888, Over Kentucky and tributaries .....25 St. 636
Jan. 8, 1889, Over Tennessee and Cumberland .....25 St. 640

Feb. 25, 1889, Over Missouri at Leavenworth, Kansas .....25 St. 691

Feb. 25, 1889, Over Cumberland and Caney Fork, Tennessee...25 St. 695

Mar. 1, 1889, Over Missouri at Kansas City, Kansas .....25 St. 751

Mar. 1, 1889, Over Bayou Bartholomew at Ward's Ferry .....25 St. 752

Mar. 1, 1889, Over Tensas at Daniel's Ferry, Louisiana .....25 St. 754

Mar. 1, 1889, Over Young's Bay in Oregon .....25 St. 755

Mar. 1, 1889, Over Kentucky and tributaries .....25 St. 760

Mar. 1, 1889, Over Coosa at Gadsden, Alabama .....25 St. 769

Mar. 2, 1889, Over Mississippi near Alma, Wisconsin .....25 St. 788

Mar. 2, 1889, Over Illinois near Kampsville, Illinois .....25 St. 864

Mar. 2, 1889, Over Tallapoosa .....25 St. 866

Mar. 2, 1889, Over Tombigbee, Warrior and Tennessee, and across Grand Pass to Dauphin Island, in Gulf of Mexico .....25 St. 867

Mar. 2, 1889, Over Red in Louisiana....25 St. 879
Mar. 2, 1889, Over St. John's in Florida.25 St. 880
Mar. 2, 1889, Over Kentucky .....25 St. 882
Mar. 2, 1889, Over Missouri at Leavenworth, Kansas .....25 St. 883
Mar. 2, 1889, Over Red and Ouachita in Louisiana .....25 St. 885
Mar. 2, 1889, Over Osage in Missouri...25 St. 899
Mar. 2, 1889, Over Mississippi at Lyons, Iowa .....25 St. 901
Mar. 2, 1889, Over Green and Barren in Kentucky .....25 St. 904
Feb. 6, 1890, Over Missouri near mouth of Kansas River.....26 St. 3
Feb. 21, 1890, Over Missouri .....26 St. 11
Mar. 15, 1890, Over Arkansas in Indian Territory .....26 St. 21
Mar. 24, 1890, Over Columbia between Oregon and Washington 26 St. 25
Mar. 24, 1890, Over Missouri at Pierre, S. D. .....26 St. 29
April 9, 1890, Over Missouri .....26 St. 47
April 9, 1890, Over White River, Arkansas .....26 St. 48
April 9, 1890, Over Arkansas at Desha, Arkansas .....26 St. 51

April 26, 1890, Over Mississippi at South St. Paul, Minn.....26 St. 69

April 28, 1890, Over Red River of the North .....26 St. 75

April 30, 1890, Over Missouri at Sioux City, Iowa .....26 St. 79

May 1, 1890, Over Brazos in Texas....26 St. 80

July 11, 1890, Over Hudson at New York .....26 St. 268

Aug. 15, 1890, Over Tennessee near Guntersville, Ala. .....26 St. 313

Aug. 29, 1890, Over Mississippi between mouths of Illinois and Missouri .....26 St. 364

Aug. 29, 1890, Over Columbia .....26 St. 366

Sept. 2, 1890, Over Tennessee near Nile's Ferry, Tenn. ....26 St. 420

Sept. 25, 1890, Over Savannah .....26 St. 472

Sept. 25, 1890, Over Ocmulgee, Savannah and Oconee .....26 St. 474

Sept. 25, 1890, Over Green and Barren in Kentucky .....26 St. 476

Sept. 26, 1890, Over Chattahoochee in Georgia .....26 St. 482

Sept. 26, 1890, Over Oconee in Georgia..26 St. 483

Sept. 30, 1890, Over Indian and Banana, in Florida .....26 St. 555

Sept. 30, 1890, Over Kentucky and tributaries .....26 St. 558
Oct. 1, 1890, Over Alabama .....26 St. 564
Oct. 1, 1890, Over Missouri in Boone Co., Missouri .....26 St. 637
Oct. 1, 1890, Over Osage in Missouri...26 St. 639
Oct. 1, 1890, Over Missouri near Quindaro, Kansas .....26 St. 643
Dec. 26, 1890, Over Willamette in Oregon .....26 St. 698
Feb. 9, 1891, Over Cumberland .....26 St. 737
Feb. 13, 1891, Over Missouri near Council Bluffs and Omaha...26 St. 760
Feb. 24, 1891, Over St. Louis between Wisconsin and Minnesota .....26 St. 781
Mar. 2, 1891, At Little Rock, Arkansas..26 St. 797
Mar. 2, 1891, Over Red at Alexandria, Louisiana .....26 St. 825
Mar. 3, 1891, Over Coal Bank Slough, Oregon .....26 St. 1087
Apl. 15, 1892, Over Missouri at Chamberlain, S. D. .....27 St. 16
Apl. 15, 1892, Over Brazos in Texas....27 St. 18
May 12, 1892, Over Missouri at DeWitt, Missouri .....27 St. 30

May 12, 1892, Over Osage at Warsaw, Missouri .....27 St. 31
June 6, 1892, Over Illinois at Havana, Illinois .....27 St. 43
June 6, 1892, Over Tennessee .....27 St. 46
June 8, 1892, Over Mississippi at Moline, Illinois .....27 St. 47
June 21, 1892, Over Alabama, Warrior, Sipsey and Tennessee, all in Alabama.....27 St. 53
June 22, 1892, Over Missouri at Yankton, S. D. .....27 St. 54
June 22, 1892, Over Rio Grande at Brownsville, Texas ....27 St. 56
July 13, 1892, Over Corpus Christi Channel, Texas .....27 St. 118
July 23, 1892, Over Black in Arkansas..27 St. 265
July 27, 1892, Over Savannah .....27 St. 274
July 27, 1892, Over Tennessee in Alabama .....27 St. 279
July 30, 1892, Over Tennessee at Depositt, Alabama .....27 St. 334
Dec. 28, 1892, Over Tallapoosa and Coosa .....27 St. 412
Jan. 10, 1893, Over Columbia in Washington .....27 St. 416

Jan. 26, 1893, Over Hiwassee, Tennessee and Clinch .....27 St. 422
Feb. 3, 1893, Over Osage in Missouri...27 St. 428
Feb. 7, 1893, Over Mobile .....27 St. 431
Feb. 9, 1893, Over Warrior in Alabama 27 St. 437
Feb. 9, 1893, Over St. Lawrence.....27 St. 439
Feb. 11, 1893, Over Cahaba in Alabama..27 St. 441
Feb. 14, 1893, Over Galveston and Brazos Canal .....27 St. 446
Feb. 14, 1893, Over St. Mary's, between Georgia and Florida...27 St. 447
Feb. 14, 1893, Over Monongahela at Pittsburgh .....27 St. 448
Feb. 18, 1893, Over Monongahela .....27 St. 462
Mar. 1, 1893, Over Mississippi (Street Ry. Bridge) .....27 St. 511
Jan. 27, 1894, Over Neches and Sabine in Texas and Louisiana.28 St. 35
Mar. 9, 1894, Over Arkansas at Van Buren, Arkansas .....28 St. 39
Apl. 2, 1894, Over Calcasieu and Sabine in Louisiana and Texas.28 St. 48
Apl. 5, 1894, Over Caddo Lake near Shreveport, La. .....28 St. 50
Apl. 21, 1894, Over Sulphur in Arkansas or Texas .....28 St. 55

Apl. 21, 1894, Over Monongahela .....28 St. 57
Apl. 21, 1894, Over Little in Arkansas..28 St. 62
Apl. 24, 1894, Over St. Louis between Wisconsin and Minnesota .....28 St. 64
May 28, 1894, Over Sulphur in Arkansas .....28 St. 78
May 28, 1894, Over Missouri at Jefferson, Mo. .....28 St. 80
June 7, 1894, Over Monongahela .....28 St. 88
June 7, 1894, Over Hudson at New York .....28 St. 89
June 14, 1894, Over the Delaware at Philadelphia .....28 St. 92
July 26, 1894, Over Missouri at Lexington, Mo. .....28 St. 120
Aug. 23, 1894, Over Contoentnea Creek at Grifton, N. C.....28 St. 489
Aug. 23, 1894, Over Bayou Des Glaices and Atchafalaya, La. ...28 St. 499
Aug. 27, 1894, Over Osage in Missouri..28 St. 571
Aug. 27, 1894, Over Missouri at DeWitt, Mo. .....28 St. 573
Jan. 25, 1895, Over Fourche LaFevre and Petit Jean, Ark....28 St. 640

Feb. 1, 1895, Over Galveston Bay, Buffalo Bayou, and Clear Fork, in Texas .....28 St. 641
Mar. 2, 1895, Over Monongahela .....28 St. 702
Mar. 2, 1895, Over Tennessee at Sheffield, Alabama .....28 St. 708
Mar. 2, 1895, Over St. Louis between Wisconsin and Minnesota .....28 St. 711
Mar. 2, 1895, Over Monongahela .....28 St. 738
Mar. 2, 1895, Over Illinois at Hennepin.28 St. 739
Mar. 13, 1896, Over Missouri at Chamberlain, S. D.....29 St. 55
Mar. 28, 1896, Over Calumet .....29 St. 76
May 4, 1896, Over Corpus Christi Channel, Texas .....29 St. 111
May 28, 1896, Over Tallahatchie in Mississippi .....29 St. 190
June 11, 1896, Over Warrior .....29 St. 386
June 11, 1896, Over Cahaba in Alabama..29 St. 388
June 11, 1896, Over Allegheny .....29 St. 391
Jan. 13, 1897, Over Black in Louisiana..29 St. 485
Jan. 26, 1897, Over Monongahela .....29 St. 495
Jan. 26, 1897, Over Monongahela .....29 St. 496
Jan. 26, 1897, Over Red at Alexandria, Louisiana .....29 St. 497

Jan. 27, 1897, Over Columbia in Washington .....29 St. 501
Jan. 30, 1897, Over Cumberland and Tennessee in Kentucky.29 St. 507
Feb. 1, 1897, Over Rio Grande in Texas 29 St. 509
Feb. 8, 1897, Over Sulphur in Arkansas 29 St. 513
Feb. 8, 1897, Over Sabine between Louisiana and Texas .....29 St. 513
Feb. 17, 1897, Over Red River of the North .....29 St. 533
Feb. 26, 1897, Over Alabama in Alabama 29 St. 598
Mar. 2, 1897, Over St. Lawrence .....29 St. 603
Mar. 12, 1898, Over Bayou Bartholomew.30 St. 275
Apl. 4, 1898, Over Red in Louisiana...30 St. 351
Apl. 11, 1898, Over Loggy Bayou in Louisiana .....30 St. 352
Apl. 11, 1898, Over Red at Shreveport in Louisiana .....30 St. 355
Apl. 21, 1898, Over Black at Pocahontas, Arkansas .....30 St. 359
Apl. 29, 1898, Over Yalobusha, Miss.....30 St. 366
June 15, 1898, Over Missouri at Quindaro, Kansas .....30 St. 471
June 16, 1898, Over St. Francis Lake at Lake City, Ark.....30 St. 474

June 29, 1898, Over Alabama, near Montgomery, Ala. .....30 St. 521
June 29, 1898, Over Niagara River .....30 St. 523
July 1, 1898, Over Black in Arkansas..30 St. 650
Feb. 2, 1899, Over Savannah in Georgia 30 St. 813
Feb. 27, 1899, Over White in Arkansas..30 St. 893
Feb. 27, 1899, Over certain rivers in Alabama .....30 St. 905
Mar. 1, 1899, Over Flint in Georgia.....30 St. 967
Mar. 3, 1899, Over Tennessee at Sheffield, Ala. .....30 St. 1366
Mar. 1, 1900, Over Red at Grand Ecore, Louisiana .....31 St. 37
Mar. 1, 1900, Over Twelve Mile Bayou near Shreveport, Louisiana .....31 St. 38
Mar. 2, 1900, Over Monongahela.....31 St. 39
Apl. 12, 1900, Over Red at Alexandria, Louisiana .....31 St. 76
Apl. 30, 1900, Over Big Sandy at Kenova, West Virginia.....31 St. 163
May 4, 1900, Over Ocmulgee and Oconee, Georgia .....31 St. 168
May 25, 1900, Over Missouri at Pierre, South Dakota .....31 St. 189

June 6, 1900, Over Mississippi at St. Paul, Minnesota .....31 St. 275

Jan. 26, 1901, Over Mississippi at Gray's Point, Missouri.31 St. 741

Feb. 8, 1901, Over Clinch at Kingston, Tennessee .....31 St. 764

Feb. 12, 1901, Over Choctawhatchee in Alabama .....31 St. 784

Feb. 12, 1901, Over Rock in Illinois.....31 St. 786

Feb. 18, 1901, Over Monongahela in Pennsylvania .....31 St. 793

Feb. 18, 1901, Over St. Joseph at St. Joseph, Michigan.....31 St. 796

Feb. 23, 1901, Over Choctawhatchee at Geneva, Alabama .....31 St. 802

Feb. 25, 1901, Over Manatee River and Gasparilla Sound .....31 St. 804

Feb. 25, 1901, Over Warrior in Alabama.31 St. 806

Feb. 25, 1901, Over Tombigbee in Alabama .....31 St. 807

Feb. 25, 1901, Over Little in Arkansas..31 St. 808

Mar. 1, 1901, Over Monongahela .....31 St. 821

Mar. 2, 1901, Over Mississippi .....31 St. 954

Mar. 2, 1901, Over Cumberland at Carthage, Tennessee .....31 St. 957

Mar. 3, 1901, Over Alabama near Montgomery (Street Ry. bridge) ..... 31 St. 1088

Mar. 3, 1901, Over Red River in Louisiana ..... 31 St. 1089

Mar. 3, 1901, Over Red in Texas..... 31 St. 1454

Mar. 3, 1901, Over Nehalem Bay and River in Georgia ..... 31 St. 1456

Feb. 11, 1902, Over Current in Arkansas 32 St. 4

Feb. 21, 1902, Over Missouri at St. Joseph, Missouri ..... 32 St. 36

Feb. 24, 1902, Over Arkansas near Fort Gibson, I. T..... 32 St. 37

Feb. 24, 1902, Over Arkansas in Arkansas ..... 32 St. 38

Feb. 24, 1902, Over White in Arkansas..32 St. 40

Mar. 10, 1902, Over Missouri at Kansas City ..... 32 St. 56

Mar. 10, 1902, Over Monongahela..... 32 St. 58

Mar. 18, 1902, Over Monongahela at Morgantown, W. Va.... 32 St. 71

Mar. 18, 1902, Over East St. Andrews Bay ..... 32 St. 72

Mar. 24, 1902, Over Ouachita in Arkansas ..... 32 St. 89

Mar. 26, 1902, Over Missouri at South Omaha .....32 St. 91
Apl. 15, 1902, Over Missouri at Parkville, Missouri .....32 St. 102
Apl. 30, 1902, Over Ohio at Allegheny, Pa. .....32 St. 178
Apl. 30, 1902, Over Red in Louisiana....32 St. 181
May 3, 1902, Over White in Arkansas..32 St. 185
May 3, 1902, Over Pearl at Monticello, Mississippi .....32 St. 187
May 7, 1902, Over Chattahoochee at Columbus, Georgia ....32 St. 192
May 28, 1902, Over Columbia at Vancouver .....32 St. 277
May 28, 1902, Over Savannah .....32 St. 280
June 14, 1902, Over Waccamaw at Conway, South Carolina....32 St. 387
June 18, 1902, Over Cumberland in Tennessee .....32 St. 390
June 21, 1902, Over White in Arkansas..32 St. 396
June 27, 1902, Over Mississippi in Minnesota .....32 St. 407
June 28, 1902, Over Ashley in South Carolina .....32 St. 493
June 30, 1902, Over Monongahela in Pennsylvania .....32 St. 497

June 30, 1902, Over Emory in Tennessee 32 St. 499
July 1, 1902, Over Missouri at Pierre, South Dakota .....32 St. 65
July 1, 1902, Over Calumet in Indiana..32 St. 66
Dec. 17, 1902, Over Missouri .....32 St. 75
Jan. 8, 1903, Over Missouri at Oacoma, S. D. .....32 St. 76
Jan. 15, 1903, Over Alabama in Alabama 32 St. 77
Feb. 3, 1903, Over Clinch in Tennessee.32 St. 79
Feb. 7, 1903, Over Rainy in Minnesota.32 St. 80
Feb. 18, 1903, Over St. Francis in Arkansas .....32 St. 83
Feb. 18, 1903, Over Allegheny at Pittsburgh .....32 St. 83
Feb. 18, 1903, Over Monongahela.....32 St. 83
Feb. 21, 1903, Over Monongahela.....32 St. 83
Feb. 28, 1903, Over Missouri at Kansas City (St. Ry. only)....32 St. 91
Feb. 28, 1903, Over Tennessee at Lewis' Bluff, Alabama .....32 St. 92
Mar. 2, 1903, Over Pearl in Mississippi.32 St. 92
Mar. 2, 1903, Over Arkansas .....32 St. 9

# APPENDIX C.

Appendix, showing bridge acts passed by Congress not containing a clause authorizing the use of such railway bridges by other companies. This list includes a number of bridges which were cited by the counsel for the appellant in the court below as intended to show that the policy of the Government was not uniform. An examination of this list will show that most of these bridges are across small and unimportant streams, and hardly seem to us to have any considerable bearing on this case.

Dec. 17, 1872, Over Ohio (cited by appellant) ..... 17 St. 398

Mar. 3, 1873, Over Genessee (cited by appellant) ..... 17 St. 610

(The road and bridge of this company were built under Act of the Legislature of New York passed April 2, 1850.)

June 23, 1874, Over Potomac (cited by appellant) ..... 18 St. 274

June 23, 1874, Over Willamette at Portland (cited by appellant) ..... 18 St. 281

Dec. 23, 1880, Over St. Mary's in Georgia (cited by appellant) 22 St. 313

(This Act authorized the construction of a one-span bridge over the St. Mary's, to be high enough to allow rafts of logs to pass under the same, and the point at which the bridge was to be built was made by the Act the head waters of navigation of the St. Mary's River.)

Aug. 8, 1882, Over St. Croix (cited by appellant) .....22 St. 370

(This bridge was authorized to be constructed over the St. Croix River between Calais, Maine, and St. Stephens, New Brunswick, and hence was to be an international bridge.)

May 29, 1884, Over Rio Grande at Laredo, Tex. (cited by appellant) .....23 St. 30

(The bridge authorized to be constructed under this Act was a street railway bridge, and was also an international bridge.)

July 5, 1884, Over Mississippi at St. Paul (cited by appellant) .....23 St. 104

(This act gave the City of St. Paul authority to construct a bridge across the Mississippi; it was not intended that any railroad bridge should be con-

structed, and no railroad bridge has been constructed under this act.

However, it is significant to note that Congress, in its act of June 6, 1900 (31 Stat. 275) authorizing the South St. Paul Belt railway to construct a bridge over the Mississippi at St. Paul, specified that all railways were to have equal rights in the use of the bridge.)

June 24, 1884, Over Willamette near Salem, Ore. (cited by appellant) .....23 St. 52

Apl. 28, 1884, Over St. Croix (cited by appellant) .....23 St. 14

Feb. 25, 1885, Over St. Croix at Stillwater, Minnesota .....23 St. 309

Mar. 2, 1885, Over Cumberland and Caney Fork near Carthage, Tennessee .....23 St. 445

May 15, 1886, Over St. Croix at Stillwater, Minnesota .....24 St. 23

May 17, 1886, Over Tennessee .....24 St. 53

July 29, 1886, Certain Bridges in Washington .....24 St. 160

May 14, 1888, Over the Black in Arkansas .....25 St. 138

June 29, 1888, Over Red at Hook's Ferry, Texas .....25 St. 210

July 19, 1888, Over Flint in Georgia....25 St. 336

Aug. 6, 1888, Over Missouri at Ponca, Nebraska .....25 St. 362

Aug. 6, 1888, Over Ocmulgee, in Georgia .....25 St. 365

Aug. 6, 1888, Over Black Warrior and Tombigbee, Ala. .....25 St. 377

Mar. 2, 1889, Over Missouri near St. Charles, Mo. .....25 St. 903

May 21, 1890, Over Oconee in Georgia...26 St. 116

Aug. 7, 1890, Over Savannah .....26 St. 311

Sept. 4, 1890, Over Boeuf, Louisiana...26 St. 422

Sept. 26, 1890, To trestle the shoal water between Cedar Point and Dauphin Island....26 St. 479

Sept. 26, 1890, Over Tennessee at Knoxville, Tennessee .....26 St. 481

Sept. 30, 1890, To bridge certain rivers in Mississippi .....26 St. 553

Dec. 26, 1890, Over Green and Barren Rivers .....26 St. 700

Feb. 9, 1891, Over Tug Fork of Big Sandy .....26 St. 736

Jan. 28, 1899, Over Missouri at Oacoma, S. D. .....30 St. 805
Feb. 15, 1900, Over Lumber, in No. Carolina .....31 St. 29
Feb. 26, 1901, Over Lumber, at Lumberton, N. C. .....31 St. 811

# APPENDIX D.

Ch. 120. (12 Stat. 489.)

July 1, 1862.

**An Act to aid in the Construction of a Railroad an Telegraph Line from the Missouri River to th Pacific Ocean, and to secure to the Governmen the use of the same for Postal, Military, an other purposes.**

Incorporators.

*Be it enacted by the Senate and House of Repr sentatives of the United States of America in Co gress assembled*, That Walter S. Burgess, William H Blodget, Benjamin H. Cheever, Charles Fosdic Fletcher, of Rhode Island; Augustus Brewster, Hen ry P. Haven, Cornelius S. Bushnell, Henry Ham mond, of Connecticut; Isaac Sherman, Dean Rich mond, Royal Phelps, William H. Ferry, Henry A Paddock, Lewis J. Stancliff, Charles A. Secor, Sam uel R. Campbell, Alfred E. Tilton, John Anderso Azariah Boody, John S. Kennedy, H. Carver, Josep Field, Benjamin F. Camp, Orville W. Childs, Alexa der J. Bergen, Ben. Holliday, D. N. Barney, S. H Witt Bloodgood, William H. Grant, Thomas W. C cott, Samuel B. Ruggles, James B. Wilson, of Ne

York; Ephraim Marsh, Charles M. Harker, of New Jersey; John Edgar Thompson, Benjamin Haywood, Joseph H. Scranton, Joseph Harrison, George W. Cass, John H. Bryant, Daniel J. Morell, Thomas M. Howe, William F. Johnson, Robert Finney, John A. Green, E. R. Myre, Charles F. Wells, junior, of Pennsylvania; Noah L. Wilson, Amasa Stone, William H. Clement, S. S. L'Hommedieu, John Brough, William Dennison, Jacob Blickinsderfer, of Ohio; William M. McPherson, R. W. Wells, Willard P. Hall, Armstrong Beatty, John Corby, of Missouri; S. J. Hensley, Peter Donahue, C. P. Huntington, T. D. Judah, James Bailey, James T. Ryan, Charles Hosmer, Charles Marsh, D. O. Mills, Samuel Bell, Louis McLane, George W. Mowe, Charles McLaughlin, Timothy Dame, John R. Robinson, of California; John Atchison and John D. Winters, of the Territory of Nevada; John D. Campbell, R. N. Rice, Charles A. Trowbridge, and Ransom Gardner, Charles W. Penny, Charles T. Gorham, William McConnell, of Michigan; William F. Coolbaugh, Lucius H. Langworthy, Hugh T. Reid, Hoyt Sherman, Lyman Cook, Samuel R. Curtis, Lewis A. Thomas, Platt Smith, of Iowa; Wm. B. Ogden, Charles G. Hammond, Henry Farnum, Amos C. Babcock, W. Seldon Gale, Nehemiah Bushnell and Lorenzo Bull, of Illinois; William H. Swift, Samuel

T. Dana, John Bertram, Franklin S. Stevens, Edward R. Tinker, of Massachusetts; Franklin Gorin, Laban J. Bradford, and John T. Levis, of Kentucky; James Dunning, John M. Wood, Edwin Noyes, Joseph Eaton, of Maine; Henry H. Baxter, George W. Collamer, Henry Keyes, Thomas H. Canfield, of Vermont; William S. Ladd, A. M. Berry, Benjamin F. Harding, of Oregon; William Bunn, junior, John Catlin, Levi Sterling, John Thompson, Elihu L. Phillips, Walter D. McIndoe, T. B. Stoddard, E. H. Brodhead, A. H. Virgin, of Wisconsin; Charles Paine, Thomas A. Morris, David C. Branham, Samuel Hanna, Jonas Votaw, Jesse L. Williams, Isaac C. Elston, of Indiana; Thomas Swan, Chauncey Brooks, Edward Wilkins, of Maryland; Francis R. E. Cornell, David Blakely, A. D. Seward, Henry A. Swift, Dwight Woodbury, John McKusick, John R. Jones, of Minnesota; Joseph A. Gilmore, Charles W. Woodman, of New Hampshire; W. H. Grimes, J. C. Stone, Chester Thomas, John Kerr, Werter R. Davis, Luther C. Challiss, Josiah Miller, of Kansas; Gilbert C. Monell, and Augustus Kountz, T. M. Marquette, William H. Taylor, Alvin Saunders, of Nebraska; John Evans, of Colorado; together with five commissioners to be appointed by the Secretary of the Interior, and all persons who shall or may be associated with them,

ıd their successors, are hereby created and erected to a body corporate and politic, in deed and in law, the name, style, and title of "The Union Pacific ailroad Company;" and by that name shall have rpetual succession, and shall be able to sue and to sued, plead and be impleaded, defend and be deıded, in all courts of law and equity within the ıited States, and may make and have a common al; and the said corporation is hereby authorized d empowered to lay out, locate, construct, furnish, aintain, and enjoy a continuous railroad and teleaph, with the appurtenances from a point on the e hundredth meridian of longitude west from eenwich, between the south margin of the valley the Republican river and the north margin of the lley of the Platte river, in the Territory of Neıska, to the western boundary of Nevada Terriy, upon the route and terms hereinafter provided, l is hereby vested with all the powers, privileges, l immunities necessary to carry into effect the rposes of this act as herein set forth. The capital ck of said company shall consist of one hundred usand shares of one thousand dollars each, which ll be subscribed for and held in not more than two ndred shares by any one person, and shall be transıble in such manner as the by-laws of said corpo-

Name and title.

Location of road. (See Secs. 8 and 14 also.)

Capital $100,000,000. Amount and number of shares altered. (See Sec. 1, Act July 2, 1864—*post*).

ration shall provide. The persons hereinbefore named, together with those to be appointed by the Secretary of the Interior, are hereby constituted and appointed commissioners, and such body shall be called the Board of Commissioners of the Union Pacific Railroad and Telegraph Company, and twenty-five shall constitute a quorum for the transaction of business. The first meeting of said board shall be held at Chicago at such time as the commissioners from Illinois herein named shall appoint, not more than three nor less than one month after the passage of this act, notice of which shall be given by them to the other commissioners by depositing a call thereof in the post-office at Chicago, post paid, to their address at least forty days before said meeting, and also by publishing said notice in one daily newspaper in each of the cities of Chicago and Saint Louis. Said board shall organize by the choice from its number of a president, secretary, and treasurer, and they shall require from said treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof as they may deem proper. It shall be the duty of said board of commissioners to open books, or cause books to be opened, at such times and in such principal cities in the United States as they or a quorum of them shall determine, to re-

Appointment of Commissioners to meet at Chicago.

Organization of Board of Commissioners.

Subscription books to be opened. (See Sec. 2, Act July 2, 1864, *post*).

ceive subscriptions to the capital stock of said corporation, and a cash payment of ten per centum on all subscriptions, and to receipt therefor. So soon as two thousand shares shall be in good faith subscribed for, and ten dollars per share actually paid into the treasury of the company, the said president and secretary of said board of commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each State in which subscription books have been opened at least thirty days previous to the day of meeting, and such subscribers as shall attend the meeting so called, either in person or by proxy, shall then and there elect by ballot not less than thirteen directors for said corporation; and in such election each share of said capital shall entitle the owner thereof to one vote. The president and secretary of the board of commissioners shall act as inspectors of said election, and shall certify under their hands the names of the directors elected at said meeting; and the said commissioners, treasurer, and secretary shall then deliver over to said directors all the properties, subscription books and other books in their possession, and thereupon the duties of said commissioners and the officers previously appointed by them shall cease

First meeting of stockholders.

Thirteen directors to be elected. (See Sec. 13, Act July 2, 1864, *post*).

and determine forever, and thereafter the stockholders shall constitute said body politic and corporate. At the time of the first and each triennial election of directors by the stockholders two additional directors shall be appointed by the President of the United States, who shall act with the body of directors, and to be denominated directors on the part of the government; any vacancy happening in the government directors at any time may be filled by the President of the United States. The directors to be appointed by the President shall not be stockholders in the Union Pacific Railroad Company. The directors so chosen shall, as soon as may be after their election, elect from their own number a president and vice-president, and shall also elect a treasurer and secretary. No person shall be a director in said company unless he shall be a bona fide owner of at least five shares of stock in the said company, except the two directors to be appointed by the President as aforesaid. Said company at any regular meeting of the stockholders called for that purpose shall have power to make by-laws, rules, and regulations as they shall deem needful and proper, touching the disposition of the stock, property, estate and effects of the company, not inconsistent herewith, the transfer of shares, the term of office, duties, and conduct of their

Two Government directors to be appointed by the President of the United States. (*Two changed to five*—Sec. 13, Act July 2, 1864, *post.*)

Changed to *fifty shares* by Sec. 1, Act July 2, 1864.

Stockholders empowered to make by-laws, etc.

officers and servants, and all matters whatsoever which may appertain to the concerns of said company; and the said board of directors shall have power to appoint such engineers, agents, and subordinates as may from time to time be necessary to carry into effect the object of this act, and to do all acts and things touching the location and construction of said road and telegraph. Said directors may require payment of subscriptions to the capital stock, after due notice, at such times and in such proportions as they shall deem necessary to complete the railroad and telegraph within the time in this act prescribed. Said president, vice-president, and directors shall hold their office for three years, and until their successors are duly elected and qualified, or for such less time as the by-laws of the corporation may prescribe; and a majority of said directors shall constitute a quorum for the transaction of business. The secretary and treasurer shall give such bonds, with such security, as the said board shall from time to time require, and shall hold their offices at the will and pleasure of the directors. Annual meetings of the stockholders of the said corporation, for the choice of officers (when they are to be chosen) and for the transaction of annual business shall be holden at such

Payments for stock. (See Sec. 2, Act July 2, 1864, *post.*)

Officers elected for three years. (Sec. 14, Act July 2, 1864, changed term to *one year.*)

Annual meetings of stockholders.

time and place and upon such notice as may be prescribed in the by-laws.

Right of way, 400 feet wide, granted. (See also Sec. 3, Act of July 2, 1864.)

Sec. 2. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to said company for the construction of said railroad and telegraph line; and the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, and depots, machine shops, switches, side tracks, turntables, and water stations. The United States shall extinguish as rapidly as may be the Indian titles to all lands falling under the operation of this act and required for the said right of way and grants hereinafter made.

Indian titles to be extinguished.

Land grant—five alternate sections on each side of road.

Sec. 3. *And be it further enacted*, That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of

ublic land, designated by odd numbers, to the mount of five alternate sections per mile on each ide of said railroad on the line thereof, and within he limits of ten miles on each side of said road, not old, reserved, or otherwise disposed of by the United tates, and to which a pre-emption or homestead laim may not have attached, at the time the line of aid road is definitely fixed: Provided, That all min- al lands shall be excepted from the operation of his act; but where the same shall contain timber, he timber thereon is hereby granted to said com- any. And all such lands, so granted by this section, hich shall not be sold or disposed of by said com- any within three years after the entire road shall ave been completed, shall be subject to settlement nd pre-emption, like other lands, at a price not ex- eding one dollar and twenty-five cents per acre, to paid to said company.

Equalling ten sections per mile. (Changed to 20 *sections* by Sec. 4, Act July 2, 1864, *post*.)

Ten mile limits on each side of road. (Changed to 20 mile limits by Act July 2, 1864, Sec. 4.)

Mineral lands not granted. (See Sec. 4, Act July 2, 1864.)

Lands "not sold or disposed of," etc.

Sec. 4. *And be it further enacted*, That whenever id company shall have completed forty consecutive les of any portion of said railroad and telegraph e, ready for the service contemplated by this act, d supplied with all necessary drains, culverts, via- cts, crossings, sidings, bridges, turn-outs, watering ces, depots, equipments, furniture, and all other purtenances of a first-class railroad, the rails and

Changed to "twenty consecutive miles" by Sec. 6, Act July 2, 1864.

all the other iron used in the construction and equipment of said road to be American manufacture of the best quality, the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that forty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company on each side of the road as far as the same is completed to the amount aforesaid; and patents shall in like manner issue as each forty miles of said railroad and telegraph line are completed upon certificate of said commissioners. Any vacancies occurring in said board of commissioners by death, resignation, or otherwise, shall be filled by the President of the United States: Provided however, That no such commissioners shall be appointed by the President of the United States, unless there shall be presented to him a statement, verified on oath by the president of said company, that such forty miles have been completed, in the manner required by this act, and setting forth with certainty the points where such forty miles begin and where the same end, which oath shall be taken before a judge of a court of record.

Patents for land to be issued.

Modified, as to issue of bonds, etc. (See Sec. 6, 7 and 8, Act July 2, 1864.)

Sec. 5. *And be it further enacted*, That, for the purposes herein mentioned, the Secretary of the Treasury shall upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest, (said interest payable semi-annually), which interest may be paid in United States treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles, and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage on the whole line of the railroad and telegraph together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of said company to redeem said bonds,

Sec. 10, Act July 2, 1864, changed "forty" to "twenty."

Bonds to be issued, character of, etc. (See also Sec. 8 and 10, Act July 2, 1864.)

U. S. lien "a first mortgage." Sec. 10 of Act of July 2, 1864, subordinates the United States lien to that of the first mortgage bonds of the respective companies.

or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States: Provided, This section shall not apply to that part of any road now constructed.

Conditions attached to grants.

Sec. 6. *And be it further enacted*, That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit despatches over said telegraph line, and transport mails, troops and munitions of war, supplies, and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid, (*at fair and reasonable rates of compensation*, not to exceed the amounts paid by private parties for the same kind of service); and all compensation for services rendered for the government shall be applied to

All compensation for services to be retained. Changed to *one-half*, by Sec. 5, Act July 2, 1864.

he payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.

Assent filed in Interior Department.

Sec. 7. *And be it further enacted*, That said company shall file their assent to this act, under the seal of said company, in the Department of the Interior, within one year after the passage of this act, and shall complete said railroad and telegraph from the point of beginning as herein provided to the western boundary of Nevada Territory before the first day of July, one thousand eight hundred and seventy-four: Provided, That within two years after the passage of this act said company shall designate the general route of said road, as near as may be, and shall file a map of the same in the Department of the Interior, whereupon the Secretary of the Interior shall cause the lands within fifteen miles of said designated route or routes to be withdrawn from pre-emption, private entry, and sale; and when any portion of said route shall be finally located, the Secretary of the Interior

Sec. 5, Act of July 2, 1864, extends time of completion, one year. To be completed by July 1, 1874.

shall cause the said lands hereinbefore granted to be surveyed and set off as fast as may be necessary for the purposes herein named: Provided, That in fixing the point of connections of the main trunk with the eastern connections, it shall be fixed at the most practicable point for the construction of the Iowa and Missouri branches as hereinafter provided.

Point of commencement to be fixed by the President of the United States.

Sec. 8. *And be it further enacted*, That the line of said railroad and telegraph shall commence at a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican river and the north margin of the valley of the Platte river, in the Territory of Nebraska, at a point to be fixed by the President of the United States, after actual surveys; thence running westerly upon the most direct, central, and practicable route, through the territories of the United States, to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

Road through Kansas to connect with Missouri Pacific, and also with the main line at a point on the 100th meridian.

Sec. 9. *And be it further enacted*, That the Leavenworth, Pawnee, and Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line, from the Missouri river, at the mouth of the Kansas river on the south side

thereof, so as to connect with the Pacific Railroad of Missouri, to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph line first mentioned and to meet and connect with the same at the meridian of longitude aforesaid; and in case the general route or line of road from the Missouri river to the Rocky mountains should be so located as to require a departure northwardly from the proposed line of said Kansas railroad before it reaches the meridian of longitude aforesaid, the location of said Kansas road shall be made so as to conform thereto; and said railroad through Kansas shall be so located between the mouth of the Kansas river, as aforesaid, and the aforesaid point, on the one hundredth meridian of longitude, that the several railroads from Missouri and Iowa, herein authorized to connect with the same, can make connection within the limits prescribed in this act, provided the same can be done without deviating from the general direction of the whole line to the Pacific coast. The route in Kansas, west of the meridian of Fort Riley, to the aforesaid point, on the one hundredth meridian of longitude, to be subject to the approval of the

President of the United States, and to be determined by him on actual survey. And said Kansas company may proceed to build said railroad to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich in the Territory of Nebraska.

"Central Pacific" authorized to build eastward from the Pacific coast on same terms and conditions as those upon which the the "Union Pacific" builds westward.

The Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, are hereby authorized to construct a railroad and telegraph line from the Pacific coast, at or near San Francisco, or the navigable waters of the Sacramento river, to the eastern boundary of California, upon the same terms and conditions, in all respects, as are contained in this act for the construction of said railroad and telegraph line first mentioned, and to meet and connect with the first mentioned railroad and telegraph line on the eastern boundary of California. Each of said companies shall file their acceptance of the conditions of this act in the Department of the Interior within six months after the passage of this act.

Limits of time and mileage as to the Kansas Company.

Sec. 10. *And be it further enacted*, That the said company chartered by the State of Kansas shall complete one hundred miles of their said road, commencing at the mouth of the Kansas River as aforesaid within two years after filing their assent to the conditions of this act, as herein provided, and one

undred miles per year thereafter until the whole is
mpleted; and the said Central Pacific Railroad
ompany of California shall complete fifty miles of
eir said road within two years after filing their
sent to the provisions of this act, as herein pro-
ded, and fifty miles per year thereafter until the
hole is completed; and after completing their
ads, respectively, said companies, or either of them,
ay unite upon equal terms with the first-named
mpany in constructing so much of said railroad and
legraph line and branch railroads and telegraph
nes in this act hereinafter mentioned, through the
erritories from the State of California to the Mis-
uri river, as shall then remain to be constructed, on
e same terms and conditions as provided in this act
relation to the said Union Pacific Railroad Com-
ny. And the Hannibal and Saint Joseph Railroad,
e Pacific Railroad Company of Missouri, and the
st-named company, or either of them, on filing their
sent to this act, as aforesaid, may unite upon equal
ms, under this act, with the said Kansas company,
constructing said railroad and telegraph, to said
eridian of longitude, with the consent of the said
ate of Kansas; and in case said first-named compa-
shall complete their line to the eastern boundary
California before it is completed across said State

Limits of time and mileage as to the Central Pacific. Changed by Sec. 5, Act July 2, 1864.

Companies may unite upon equal terms to construct unfinished road.

"Hannibal and St. Joseph" and "Pacific of Missouri" may unite with the Kansas Company in constructing. See Sec. 16 of this Act; also Sec. 16 of Act, July 2, 1864.

by the Central Pacific Railroad Company of Califo
nia, said first-named company is hereby authorized
continue in constructing the same through Califo
nia, with the consent of said State, upon the ter
mentioned in this act, until said roads shall meet a
connect, and the whole line of said railroad and te
graph is completed; and the Central Pacific Railro
Company of California, after completing its ro
across said State, is authorized to continue the co
struction of said railroad and telegraph through t
Territories of the United States to the Missouri r
er, including the branch roads specified in this a
upon the routes hereinbefore and hereinafter in
cated, on the terms and conditions provided in t
act in relation to the said Union Pacific Railro
Company, until said roads shall meet and conne
and the whole line of said railroad and branches a
telegraph is completed.

Central Pacific authorized to build to the Missouri River. See also Sec. 16, Act July 2, 1864, and Sec. 2, Act July 3, 1866.

Sec. 11. *And be it further enacted*, That
three hundred miles of said road most mountain
and difficult of construction, to wit: one hundred a
fifty miles westwardly from the eastern base of
Rocky mountains, and one hundred and fifty m
eastwardly from the western base of the Sierra
vada mountains, said points to be fixed by the Pr
dent of the United States, the bonds to be issue

Bonds for $48,000 per mile to be issued for road over the Rocky and Sierra Nevada mountains.

aid in the construction thereof shall be treble the number per mile hereinbefore provided, and the same shall be issued, and the lands herein granted be set apart upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid, that twenty consecutive miles of the same are completed; and between the sections last named of one hundred and fifty miles each the bonds to be issued to aid in the construction thereof shall be double the number per mile first mentioned, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed: Provided, That no more than fifty thousand of said bonds shall be issued under this act to aid in constructing the main line of said railroad and telegraph.

Bonds for $32,000 per mile to be issued for road between the Rocky mountains and the Sierra Nevada mountains.

Sec. 12. *And be it further enacted*, That whenever the route of said railroad shall cross the boundary of any State or Territory, or said meridian of longitude, the two companies meeting or uniting there shall agree upon its location at that point, with reference to the most direct and practicable through route, and in case of difference between them as to said location the President of the United States shall

Location of route at State lines, etc.

determine the said location; the companies named in each State and Territory to locate the road across the same between the points so agreed upon, except as herein provided. The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri river to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio Railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one connected, continuous line; and the companies herein named in Missouri, Kansas, and California, filing their assent to the provisions of this act, shall receive and transport all iron rails, chairs, spikes, ties, timber, and all materials required for constructing and furnishing said first-mentioned line between the aforesaid point, on the one hundredth meridian of longitude and western boundary of Nevada Territory, whenever the same is required by said first-named company, at cost, over that portion of the roads of said companies constructed under the provisions of this act.

Tracks to be of uniform width.

Road to be used as a continuous line. See also Sec. 15, Act July 2, 1864, *post*.

Sec. 13. *And be it further enacted*, That the Hannibal and Saint Joseph Railroad Company of Missouri may extend its roads from Saint Joseph, via Atchison, to connect and unite with the road through Kansas, upon filing its assent to the provisions of this act, upon the same terms and conditions, in all respects, for one hundred miles in length next to the Missouri river, as are provided in this act for the construction of the railroad and telegraph line first mentioned, and may for this purpose, use any railroad charter which has been or may be granted by the Legislature of Kansas: Provided, That if actual survey shall render it desirable, the said company may construct their road, with the consent of the Kansas legislature, on the most direct and practicable route west from Saint Joseph, Missouri, so as to connect and unite with the road leading from the western boundary of Iowa at any point east of the one hundredth meridian of west longitude, or with the main trunk road at said point; but in no event shall lands or bonds be given to said company, as herein directed, to aid in the construction of their said road for a greater distance than one hundred miles. And the Leavenworth, Pawnee and Western Railroad Company of Kansas

The Hannibal and St. Joseph R. R. Co. authorized to extend its road through Kansas, as a branch of the Pacific Railroad.

May connect with Union Pacific or Kansas Pacific. See also Sec. 16, Act July 2, 1864.

Leavenworth branch authorized.

may construct their road from Leavenworth to unite with the road through Kansas.

Iowa Branch to be constructed by the Union Pacific Company to the 100th meridian.

Sec. 14. *And be it further enacted*, That the said Union Pacific Railroad Company is hereby authorized and required to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa, to be fixed by the President of the United States, upon the most direct and practicable route to be subject to his approval, so as to form a connexion with the lines of said company at some point on the one hundredth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of Iowa, upon the same terms and conditions in all respects as are contained in this act for the construction of the said railroad and telegraph first mentioned; and the said Union Pacific Railroad Company shall complete one hundred miles of the road and telegraph in this section provided for in two years after filing their assent to the conditions of this act, as by the terms of this act required, and at the rate of one hundred miles per year thereafter, until the whole is completed: Provided, That a failure upon the part of said company to make said connection in the time aforesaid, and to perform the obligations imposed on said company by this section and to operate said road in the

same manner as the main line shall be operated, shall forfeit to the government of the United States all the rights, privileges, and franchises granted to and conferred upon said company by this act. And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to a point on, and so as to connect with, the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States not further west than the one hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply with the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned.

Union Pacific Company authorized and required to construct Sioux City branch, so as to connect with main line. This section is amended by Sec. 17, Act July 2, 1864.

The President of the United States may prescribe connections for other roads. See R. S. § 5257.

Sec. 15. *And be it further enacted*, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words their associates, successors and assigns, the same as if the words had been properly added thereto.

Wherever word Company appears shall embrace successors, assigns, etc.

Consolidation authorized. See also Sec. 10 of this Act, and Sec. 16, Act July 2, 1864, post

Sec. 16. *And be it further enacted*, That at any time after the passage of this act all of the railroad companies named herein, and assenting hereto, or any two or more of them, are authorized to form themselves into one consolidated company; notice of such consolidation, in writing, shall be filed in the Department of the Interior, and such consolidated company shall thereafter proceed to construct said railroad and branches and telegraph line upon the terms and conditions provided in this act.

Sec. 17. *And be it further enacted*, That in case said company or companies shall fail to comply with the terms and conditions of this act, by not completing said road and telegraph and branches within a reasonable time, or by not keeping the same in repair and use, but shall permit the same, for an un-

reasonable time, to remain unfinished or out of repair, and unfit for use, Congress may pass any act to ensure the speedy completion of said road and branches, or put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the use of the United States, to repay all such expenditures caused by the default and neglect of such company or companies: Provided, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri river to the navigable waters of the Sacramento river, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling stock, machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States: Provided, That of the bonds of the United States in this act provided to be delivered for any and all parts of the roads to be constructed east of the one hundredth meridian of west longitude from Greenwich, and for any part of the road west of the west foot of the Sierra Nevada mountain, there shall be reserved of each part and instalment

Congress may ensure speedy completion.

Continuous line to be completed from the Missouri to the Sacramento by July 1, 1876. See Secs. 5 and 7, Act July 2, 1864.

This reservation repealed by Sec. 7, Act July 2, 1864.

twenty-five per centum, to be and remain in the United States treasury, undelivered, until said road and all parts thereof provided for in this act are entirely completed; and of all the bonds provided to be delivered for the said road, between the two points aforesaid, there shall be reserved out of each instalment fifteen per centum, to be and remain in the treasury until the whole of the road provided for in this act is fully completed; and if the said road or any part thereof shall fail of completion at the time limited therefor in this act, then and in that case the said part of said bonds so reserved shall be forfeited to the United States.

Congress may reduce rates when net earnings exceed ten per cent. of cost of road.

Sec. 18. *And be it further enacted*, That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable, in amount, and mav fix and establish the same by law. And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad

and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.

Railroad Companies authorized to arrange with Telegraph Companies. See also Sec. 15, Act July 2, 1864, *post*.

Sec. 19. *And be it further enacted*, That the several railroad companies herein named are authorized to enter into an arrangement with the Pacific Telegraph Company, the Overland Telegraph Company, and the California State Telegraph Company, so that the present line of telegraph between the Missouri River and San Francisco may be moved upon or along the line of said railroad and branches as fast as said roads and branches are built; and if said arrangement be entered into, and the transfer of said telegraph line be made in accordance therewith to the line of said railroad and branches, such transfer shall, for all purposes of this act, be held and considered a fulfillment on the part of said railroad companies of the provisions of this act in regard to the construction of said line of telegraph. And, in case of disagreement, said telegraph companies are authorized to remove their line of telegraph along and upon the line of railroad herein contemplated with-

out prejudice to the rights of said railroad companies named herein.

Annual report to the Secretary of the Treasury. Repealed by Act of June 25, 1868, 15 Stat., 79. This Section and the Act of June 25, 1868, were repealed by Act of June 19, 1878, 20 Stat., 169.

Sec. 20. *And be it further enacted*, That the corporation hereby created and the roads connected therewith, under the provisions of this act, shall make to the Secretary of the Treasury an annual report wherein shall be set forth—

First. The names of the stockholders and their places of residence, so far as the same can be ascertained;

Second. The names and residences of the directors, and all other officers of the company;

Third. The amount of stock subscribed, and the amount thereof actually paid in;

Fourth. A description of the lines of road surveyed, of the lines thereof fixed upon for the construction of the road, and the cost of such surveys;

Fifth. The amount received from passengers on the road;

Sixth. The amount received for freight thereon;

Seventh. A statement of the expense of said road and its fixtures;

Eighth. A statement of the indebtedness of said company, setting forth the various kinds thereof. Which report shall be sworn to by the president of

the said company, and shall be presented to the Secretary of the Treasury on or before the first day of July in each year.

Approved, July 1, 1862.

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Ch. 216 (13 Stat. 356.)

**An Act to amend an Act entitled "An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the Use of the same for Postal, Military, and other purposes," approved July first, eighteen hundred and sixty-two.**

July 2, 1864

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the capital stock of the company entitled the Union Pacific Railroad Company, authorized by the act of which this act is amendatory, shall be in shares of one hundred dollars, instead of one thousand dollars, each, and the number of shares shall be one million, instead of one hundred thousand; and that the number of shares which any person shall hold to entitle him to serve as a director in said company (except the five directors to be appointed by government) shall be fifty shares, in-

Amount per share changed from $1000 to $100.

stead of five shares; and that every subscriber to said capital stock for each share of one thousand dollars heretofore subscribed, shall be entitled to a certificate for ten shares of one hundred dollars each; and that the following words in section first of said act, "which shall be subscribed for and held in not more than two hundred shares by any one person," be and the same are hereby repealed.

Subscriptions to capital stock, how and where made.

Sec. 2. *And be it further enacted*, That the Union Pacific Railroad Company shall cause books to be kept open to receive subscriptions to the capital stock of said Company, (until the entire capital of one hundred millions of dollars shall be subscribed,) at the general office of said company in the city of New York, and in each of the cities of Boston, Philadelphia, Baltimore, Chicago, Cincinnati and Saint Louis, at such places as may be designated by the President of the United States, and in such other localities as may be directed by him. No subscription for said stock shall be deemed valid unless the subscriber therefor, shall at the time of subscribing, pay or remit to the treasurer of the company an amount per share subscribed by him equal to the amount per share previously paid by the then existing stockholders. The said company shall make assessments upon its stockholders of not less than five

Payments on subscription.

Assessments upon stockholders.

ollars per share, and at intervals of not exceeding ix months from and after the passage of this act, ntil the par value of all shares subscribed shall e fully paid; and money only shall be receivable or any such assessment, or as equivalents for any ortion of the capital stock hereinbefore authorized. The capital stock of said Company shall not be increased beyond the actual cost of said road. And the tock of the company shall be deemed personal property, and shall be transferable on the books of the ompany, at the general office of said company in the ity of New York, or at such other transfer office as he company may establish.

Capital stock not to exceed cost of road.

Transfers of stock.

Sec. 3. *And be it further enacted*, That the Union Pacific Railroad Company, and all other companies provided for in this act, and the act to which his is an amendment, be, and hereby are, empowered o enter upon, purchase, take and hold any land or remises, that may be necessary and proper for the onstruction and working of said road, not exceeding in width one hundred feet on each side of its center line, unless a greater width be required for the urpose of excavation or embankment; and also any nds or premises that may be necessary and proper or turnouts, standing-places for cars, depots, station ouse[s] or any other structures required in the con-

Any land or premises may be taken for use of road—not to exceed 100 feet on each side.

struction and operating of said road. And eac

Encumbrances to be removed.

said companies shall have the right to cut and rem
trees or other materials that might, by falling,
cumber its road-bed, though standing or being n
than one hundred feet therefrom. And in case
owner or claimant of such lands or premises and
company cannot agree as to the damages, the am

Damages, how determined.

shall be determined by the appraisal of three d
terested commissioners, who may be appointed
application by any party to any judge of a cou
record in any of the territories in which the l
or premises to be taken lie; and said commissio
in their assessments of damages, shall appraise
premises at what would have been the value the
if the road had not been built; and upon return
court of such appraisement, and upon the pay
to the clerk thereof of the amount so awarde
the commissioners for the use and benefit of
owner thereof, said premises shall be deemed t
taken by said company, which shall thereby ac
full title to the same for the purposes afore

Appeal from assessment of Commissioners.

And either party, feeling aggrieved by said as
ment, may, within thirty days, file an appeal t
from, and demand a jury of twelve men to esti
the damage sustained; but such appeal shall
interfere with the rights of said company to

upon the premises taken, or to do any act necessary in the construction of its road. And said party appealing shall give bonds, with sufficient surety, or sureties, for the payment of any costs that may arise upon such appeal. And in case the party appealing does not obtain a more favorable verdict, such party shall pay the whole cost incurred by the appellee, as well as its own. And the payment into court, for the use of the owner or claimant, of a sum equal to that finally awarded, shall be held to vest in said company the title of said land, and the right to use and occopy the same for the construction, maintaining, and operating of the road of said company. And in case any of the lands to be taken as aforesaid shall be held by any person residing without the territory or subject to any legal disability, the court may appoint a proper person, who shall give bonds, with sufficient surety, or sureties, for the faithful execution of his trust, and who may represent in court the person disqualified or absent as aforesaid, when the same proceeding shall be had in reference to the appraisement of the premises to be taken, and with the same effect, as have been already described. And the title of the company to the land taken by virtue of this act shall not be affected or impaired by reason of any failure by any guardian to discharge faithfully

Title on payment of final award.

his trust. And in case it shall be necessary for either of the said companies to enter upon lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purpose of its said railroad, and may institute proceedings in manner described for the purpose of ascertaining the value of and acquiring a title to the same; and the court may determine the kind of notice to be served on such owner or owners, and may in its discretion appoint an agent or guardian to represent such owner or owners, in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road, across any land, all claim to damages against said company shall be barred. It shall be competent for the legal guardian of any infant, or any other person under guardianship, to agree with the proper company as to damages sustained by reason of the taking of any lands of any such person under disability, as aforesaid, for the use as aforesaid; and upon such agreement being made, and approved by the court having supervision of the official acts of said guardian, the said guardian shall have full power to make and execute a conveyance thereof to the said company, which shall vest the title thereto in the said company.

Unoccupied lands, how acquired.

Sec. 4. *And be it further enacted*, That section ree of said act be hereby amended by striking out e word "five," where the same occurs in said sec- n, and by inserting in lieu thereof the word "ten;" d by striking out the word "ten," where the same curs in said section, and inserting in lieu thereof e word "twenty." And section seven of said act hereby amended by striking out the word "fif- en," where the same occurs in said section, and in- rting in lieu thereof the word "twenty-five." And e term "mineral land," wherever the same occurs this act, and the act to which this is an amend- ent, shall not be construed to include coal and iron nd. And any lands granted by this act or the act which this is an amendment, shall not defeat or npair any pre-emption, homestead, swamp land, or ther lawful claim, nor include any government res- rvation or mineral lands, or the improvements of ny bona fide settler, or any lands returned and de- ominated as mineral lands, and the timber neces- ary to support his said improvements as a miner or griculturist, to be ascertained under such rules as ave been or may be established by the Commissioner f the General Land Office, in conformity with the rovisions of the pre-emption laws: Provided, That he quantity thus exempted by the operation of this

Land-grant doubled. See Sec. 3, Act July 1, 1862.

Coal and iron lands belong to the Company.

Lands excepted from grant.

act and the act to which this act is an amendment, shall not exceed one hundred and sixty acres for each settler who claims as an agriculturist; and such quantity for each settler who claims as a miner, as the said Commissioner may establish by general regulation, Provided, also, that the phrase, "but where the same shall contain timber, the timber thereon is hereby granted to said company," in the proviso to said section three shall not apply to the timber growing or being on any land farther than ten miles from the centre line of any one of said roads or branches mentioned in said act or in this act. And all lands shall be excluded from the operation of this act and of the act to which this act is an amendment, which were located, or selected to be located, under the provisions of an act entitled "an Act donating lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two, and notice thereof given at the proper land office.

What timber belongs to Company.

Other lands not granted.

Sec. 5. *And be it further enacted*, That the time for designating the general route of said railroad, and of filing the map of the same, and the time for the completion of that part of the railroads required by the terms of said act of each company be, and the

Time for designation of route extended one year.

ame is hereby, extended one year from the time in aid act designated; and that the Central Pacific Railroad Company of California shall be required to omplete twenty-five miles of their said road in each ear thereafter, and the whole to the State line with- n four years, and that only one-half of the compen- ation for services rendered for the government by aid companies shall be required to be applied to the ayment of the bonds issued by the government in id of the construction of said roads.

Only one-half of compensation for services to be retained. Amending Sec. 6, Act of July 1, 1862.

Sec. 6. *And be it further enacted*, That the pro- iso to section four of said act is hereby modified as ollows, viz.: And the President of the United States s hereby authorized, at any time after the passage f this act, to appoint for each and every of said oads, three commissioners, as provided for in the ct to which this act is amendatory; and the verified tatement of the president of the California com- any, required by said section four, shall be filed in he office of the United States Surveyor General for he State of California, instead of being presented to he President of the United States; and the said urveyor General shall thereupon notify the said ommissioners of the filing of such statement, and the aid commissioners shall thereupon proceed to ex- mine the portion of said railroad and telegraph line

Sec. 4, Act July 1, 1862, modified as to all the roads.

Affidavits to be filed in California.

Surveyor General to notify Commissioners.

so completed, and make their report thereon to the President of the United States, as provided by the act to which this is amendatory. And such statements may be filed, and such railroad and telegraph line be examined and reported on by the said commissioners, and the requisite amount of bonds may be issued, and the lands appertaining thereto may be set apart, located, entered, and patented, as provided in this act and the act to which this is amendatory, upon the construction by said railroad company of California of any portion of not less than twenty consecutive miles of their said railroad and telegraph line, upon the certificate of said commissioners that such portion is completed as required by the act to which this is amendatory. And section ten of the act of which this is amendatory is hereby amended by inserting after the words "United States" in the last clause, the words "and States intervening."

Proceedings as to California Company.

Amends Act of July 1, 1862.

Sec. 7. *And be it further enacted*, That so much of section seventeen of said act as provides for a reservation by the government of a portion of the bonds to be issued to aid in the construction of the said railroads is hereby repealed. And the failure of any one company to comply fully with the conditions and requirements of this act or the act to which this is amendatory, shall not work a forfeiture of the rights.

Repeal of reservation of bonds required by Sec. 17, Act July 1, 1862.

Failure of one company to comply not to affect others. Sec. 17, Act July 1, 1862.

privileges, or franchise of any other company or companies that shall have complied with the same.

Sec. 8. *And be it further enacted*, That for the purpose of facilitating the work on said railroad, and of enabling the said company as early as practicable to commence the grading of said railroad in the regions of the mountains, between the eastern base of the Rocky Mountains and the western base of the Sierra Nevada Mountains, so that the same may be finally completed within the time required by law, it is hereby provided that whenever the chief engineer of the said company, and said commissioners, shall certify that a certain proportion of the work required to prepare the road for the superstructure on any such section of twenty miles is done, (which said certificate shall be duly verified,) the Secretary of the Treasury is hereby authorized and required, upon the delivery of such certificate, to issue to said company a proportion of said bonds, not exceeding two-thirds of the amount of bonds authorized to be issued under the provisions of the act, to aid in the construction of such section of twenty miles, nor in any case not exceeding two-thirds of the value of the work done, the remaining one-third to remain until the said section is fully completed, and certified by the commissioners appointed by the

Partial issue of bonds authorized—modifying Sec. 11, Act July 1, 1862.

President, according to the terms and provisions of the said act; and no such bonds shall issue to the Union Pacific Railroad Company for work done west of Salt Lake City under this section, more than three hundred miles in advance of the completed continuous line of said railroad from the point of beginning on the one hundredth meridian of longitude.

Union Pacific restricted on work west of Salt Lake City.

Authorized to establish ferries and construct bridges. See Act of Feb. 24, 1871.

Sec. 9. And be it further enacted, That to enable any one of said corporations to make convenient and necessary connections with other roads, it is hereby authorized to establish and maintain all necessary ferries upon and across the Missouri River and other rivers which its road may pass in its course; and authority is hereby given said corporation to construct bridges over said Missouri River and all other rivers for the convenience of said road: Provided, That any bridge or bridges it may construct over the Missouri River or any other navigable river on the line of said road, shall be constructed with suitable and proper draws for the passage of steamboats, and shall be built, kept, and maintained, at the expense of said company in such manner as not to impair the usefulness of said rivers for navigation to any greater extent than such structures of the most approved character necessarily do. And provided further; that any company authorized by this act to construct

its road and telegraph line from the Missouri River to the initial point aforesaid may construct its road and telegraph line so as to connect with the Union Pacific Railroad at any point westward of such initial point, in case such company shall deem such westward connection more practicable or desirable; and in aid of the construction of so much of its road and telegraph line as shall be a departure from the route hereinbefore provided for its road such company shall be entitled to all the benefits and be subject to all the conditions and restrictions of this act: Provided further, however, That the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided, if the same had united with the Union Pacific Railroad on the 100th degree of longitude; nor shall such company be entitled to receive any greater amount of alternate sections of public lands than are also herein provided.

Branch roads may connect with main line at any point west of the "initial point" on the 100th meridian of west longitude.

No bonds or lands for roads west of 100th meridian.

Sec. 10. *And be it further enacted*, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road may, on the completion of each section of said road, as provided in this act and the act to which

First mortgage bonds may be issued by the Companies.

this act is an amendment, issue their first mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of despatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States. And said section is further amended by striking out the words "forty" and inserting in lieu thereof the words "on each and every section of not less than twenty."

Lien of U. S. Bonds subordinated.

Sec. 11. *And be it further enacted*, That if any of the railroad companies entitled to bonds of the United States or to issue their first mortgage bonds herein provided for, has, at the time of the approval of this act issued or shall thereafter issue any of its own bonds or securities in such form or manner as in law or equity to entitle the same to priority o

Bonds with prior lien already or hereafter issued to or by companies to be deducted.

preference of payment to the said guaranteed bonds, or said first mortgage bonds, the amount of such corporate bonds outstanding and unsatisfied or uncancelled shall be deducted from the amount of such government and first mortgage bonds which the company may be entitled to receive and issue; and such an amount only of such government bonds and such first mortgage bonds shall be granted or permitted, as added to such outstanding, unsatisfied or uncancelled bonds of the company, shall make up the whole amount per mile to which the company would otherwise have been entitled. And Provided further, That before any bonds shall be so given by the United States, the company claiming them shall present to the Secretary of the Treasury an affidavit of the president and secretary of the company to be sworn to before the judge of a court of record setting forth whether said company has issued any such bonds or securities, and, if so, particularly describing the same, and such other evidence as the Secretary may require, so as to enable him to make the deduction herein required; and such affidavit shall then be filed and deposited in the office of the Secretary of the Interior. And any person swearing falsely to any such affidavit, shall be deemed guilty of perjury, and on conviction thereof, shall be punished as aforesaid.

Affidavit to be made as to amount of Company bonds outstanding.

No land or bonds for roads built prior to July 1, 1862, etc.—.

Provided also, That no land granted by this act shall be conveyed to any party or parties, and no bonds shall be issued to any company or companies, party or parties, on account of any road or part thereof, made prior to the passage of the act to which this act is an amendment, or made subsequent thereto under the provisions of any act or acts other than this act, and the act amended by this act.

Sec. 12. *And be it further enacted*, That the Leavenworth, Pawnee and Western Railroad Company, now known as the Union Pacific Railroad Company, Eastern Division, shall build the railroad from the mouth of Kansas River, by the way of Leavenworth, or if that be not deemed the best route, then the said company shall, within two years, build a railroad from the city of Leavenworth to unite with the main stem at or near the city of Lawrence; but to aid in the construction of said branch the said company shall not be entitled to any bonds. And if the Union Pacific Railroad Company shall not be proceeding in good faith to build the said railroad through the Territories, when the Leavenworth, Pawnee and Western Railroad Company, now known as the Union Pacific Railroad Company, Eastern Division, shall have completed their road to the hundredth degree of longitude, then the last named com-

Leavenworth Branch to be built without any U. S. Bonds.

Kansas Company may build road if Union Pacific is not doing so when, etc.

pany may proceed to make said road westward, until it meets and connects with the Central Pacific Railroad Company on the same line. And the said railroad, from the mouth of Kansas River to the one hundredth meridian of longitude, shall be made by the way of Lawrence and Topeka, or on the bank of the Kansas River opposite said towns: Provided, That no bonds shall be issued, or land certified by the United States to any person or company, for the construction of any part of the main trunk line of said railroad west of the one hundredth meridian of longitude and east of the Rocky Mountains, until said road shall be completed from or near Omaha, on the Missouri River, to the said one hundredth meridian of longitude.

Kansas road by way of Topeka.

No bonds for road west of 100th meridian until, etc.

Sec. 13. *And be it further enacted*, That at and after the next election of directors, the number of directors to be elected by the stockholders shall be fifteen; and the number of directors to be appointed by the President shall be five: and the President shall appoint three additional directors to serve until the next regular election, and thereafter five directors. At least one of said government directors shall be placed on each of the standing committees of said company, and at least one on every special committee that may be appointed. The Government directors

Fifteen directors to be elected; five Gov. directors to be appointed. Sec 1, Act July 1, 1862, modified.

One Gov. director on each Committee.

Gov. directors to report to

Secretary of Interior, and

shall, from time to time, report to the Secretary of the Interior, in answer to any inquiries he may make of them, touching the condition, management and progress of the work, and shall communicate to the Secretary of the Interior at any time, such information as should be in the possession of the department. They shall, as often as may be necessary to a full knowledge of the condition and management of the line, visit all portions of the line of road, whether built or surveyed; and while absent from home, attending to their duties as directors, shall be paid their actual travelling expenses, and be allowed and paid such reasonable compensation for their time actually employed as the board of directors may decide.

to visit all portions of the line.

Election of directors, when and where.

Sec. 14. *And be it further enacted*, That the next election for directors of said railroad shall be held on the first Wednesday of October next, at the office of said company in the city of New York, between the hours of ten o'clock A. M. and four o'clock P. M. of said day; and all subsequent regular elections shall be held annually thereafter at the same place; and the directors shall hold their office for one year, and until their successors are qualified.

Term of office, one year.

Roads to be used as one continuous line—reaffirming Sec. 12, Act July 1, 1862.

Sec. 15. *And be it further enacted*, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said

roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the government are concerned, as one continuous line, **and in such operation and use to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies*, or adverse to the road or business of any or either of the others, and it shall not be lawful for the proprietors of any line of telegraph authorized by this act, or the act amended by this act, to refuse or fail, to convey for all persons requiring the transmission of news and messages of like character, on pain of forfeiting to the person injured for each offence, the sum of one hundred dollars, and such other damages as he may have suffered, on account of said refusal or failure, to be sued for and recovered in any Court of the United States, or of any State or Territory of competent jurisdiction.

Telegraph messages not to be refused.

Sec. 16. *And be it further enacted*, That any two or more of the companies authorized to participate in the benefits of this act, are hereby authorized at any time to unite and consolidate their organizations, as the same may or shall be, upon such terms and conditions, and in such manner as they may agree upon,

Authority to consolidate; enlarging the powers given by Sec. 16, Act July 1, 1862, and Sec. 10 of this Act.

*Italics are ours.

and as shall not be incompatible with this act, or the laws of the State or States in which the roads of such companies may be, and to assume and adopt such corporate name and style as they may agree upon, with a capital stock not to exceed the actual cost of the roads so to be consolidated, and shall file a copy of such consolidation in the Department of the Interior; and thereupon such organization so formed and consolidated, shall succeed to, possess and be entitled to receive from the government of the United States, all and singular the grants, benefits, immunities, guaranties, acts and things to be done and performed, and be subject to the same terms, conditions, restrictions and requirements which said companies respectively, at the time of such consolidation, are or may be entitled or subject to under this act, in place and substitution of said companies so consolidated respectively. And all other provisions of this act, so far as applicable, relating or in any manner appertaining to the companies so consolidated, or either thereof, shall apply and be of force as to such consolidated organization. And in case upon the completion by such consolidated organization of the roads or either of them of the companies so consolidated, any other of the road or roads of either of the other companies authorized as aforesaid, (and

forming or intended or necessary to form a portion of a continuous line from each of the several points on the Missouri River, hereinbefore designated, to the Pacific coast,) shall not have constructed the number of miles of its said road, within the time herein required, such consolidated organization is hereby authorized to continue the construction of its road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built, until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such point to connect and unite therewith; and for and in aid thereof the said consolidated organization may do and perform, in reference to such portion of road and telegraph as shall so be in continuation of its constructed road and telegraph, and to the construction and equipment thereof, all and singular the several acts and things hereinbefore provided, authorized or granted to be done by the company hereinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guaranties, acts and things to be done and performed by the government of the United States, by the President of the United States, by the

Powers and duties.

Rights and conditions.

Secretaries of the Treasury and Interior, and by commissioners, in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions, so far as the same are applicable thereto. And said consolidated company shall pay to said defaulting company, the value, to be estimated by competent engineers of all the work done and material furnished by said defaulting company, which may be adapted and used by said consolidated company in the progress of the work under the provisions of this section: Provided nevertheless, That said defaulting company may at any time, before receiving pay for its said work and material, as hereinbefore provided, on its own election, pay said consolidated company the value of the work done and material furnished by said consolidated company, to be estimated by competent engineers, necessary for and used in the construction of the road of said defaulting company, and resume the control of its said road; and all the rights, benefits and privileges which shall be acquired, possessed or exercised, pursuant to this section, shall be to that extent an abatement of the rights, benefits and privileges hereinbefore granted to such other company. And in case any company authorized thereto shall not enter into such

nsolidated organization, such company, upon the mpletion of its road as hereinbefore provided, shall entitled to, and is hereby authorized to continue d extend the same under the circumstances, and accordance with the provisions of this section, and have all the benefits thereof, as fully and com-tely as are herein provided touching such consoli-ted organization. And in case more than one such nsolidated organization shall be made, pursuant to s act, the terms and conditions of this act, herein-fore recited as to one, shall apply in like manner, rce and effect to the other. Provided, however, at rights and interests at any time acquired by e such consolidated organization shall not be im-ired by another thereof. It is further provided at, should the Central Pacific Railroad Company California complete their line to the eastern line the State of California before the line of the Union cific Railroad Company shall have been extended stward so as to meet the line of said first named mpany, said first named company may extend their e of road eastward one hundred and fifty miles on e established route, so as to meet and connect with e line of the Union Pacific road, complying in all spects with the provisions and restrictions of this t as to said Union Pacific road, and upon doing

Company not consolidated has equal rights with those which consolidate.

Central Pacific may build Eastward from the California line. See also Sec. 10, Act of July 1, 1862, and Sec. 2, Act of July 3, 1866.

so, shall enjoy all the rights, privileges and benefits conferred by this act on said Union Pacific Railroad Company.

Sec. 14, Act July 1, 1862, amended as to the Sioux City branch.

Sec. 17. *And be it further enacted*, That so much of section fourteen of said act as relates to a branch from Sioux City be, and the same is hereby amended so as to read as follows: That whenever a line of railroad shall be completed through the States of Iowa or Minnesota to Sioux City, such company now organized or as may hereafter be organized under the laws of Iowa, Minnesota, Dakota or Nebraska, as the President of the United States, by its request, may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route to such a point on, and so as to connect with the Iowa branch of the Union Pacific Railroad from Omaha, or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act to which this is an amendment, for the construction of the said Union and Pacific Railroad, and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year: Provided, That said Union Pacific Railroad Company shall be, and is hereby released from the

construction of said branch. And said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch: And provided further, that if a railroad should not be completed to Sioux City across Iowa or Minnesota within eighteen months from the date of this act, then said company designated by the President as aforesaid, may commence, continue and complete the construction of said branch as contemplated by the provisions of this act: Provided, however, that if the said company so designated by the President as aforesaid, shall not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act, then and in that case all the railroad which shall have been constructed by said company shall be forfeited to, and become the property of, the United States.

Sioux City and Pacific to be completed by March 3, 1869.

Sec. 18. *And be it further enacted*, That the Burlington and Missouri River Railroad Company, a corporation organized under and by virtue of the

Burlington and Missouri River Railroad Company of Iowa authorized to build westward to the one hundredth meridian.

laws of the State of Iowa, be and hereby is authorized to extend its road through the Territory of Nebraska from the point where it strikes the Missouri river south of the mouth of the Platte river, to some point not further west than the one hundredth meridian of west longitude so as to connect by the most practicable route with the main trunk of the Union Pacific Railroad, or that part of it which runs from Omaha to the said one hundredth meridian of west longitude. And for the purpose of enabling said Burlington and Missouri River Railroad Company to construct that portion of their road herein authorized, the right of way through the public lands is hereby granted to said company for the construction of said road; and the right, power and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber and other materials for the construction thereof. Said right of way is granted to said company to the extent of two hundred feet, where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side-tracks, turntables, and water stations. And the United States shall extinguish as rapidly as may be, consistent with public policy and the welfare of the said Indians, the Indian

Grant of right of way over public lands.

Indian titles to be extinguished.

titles to all lands falling under the operation of this section and required for the said right of way and grant of land herein made.

Grant of lands to B. & M. R. R. R. Co.

Sec. 19. *And be it further enacted*, That for the purpose of aiding in the construction of said road, there be, and hereby is granted, to the said Burlington and Missouri River Railroad Company, every alternate section of public land (excepting mineral lands as provided in this act) designated by odd numbers to the amount of ten alternate sections per mile on each side of said road on the line thereof and not sold, reserved or otherwise disposed of by the United States and to which a pre-emption or homestead claim may not have attached, at the time the line of said road is definitely fixed. Provided, said Company shall accept this grant within one year from the passage of this act, by filing such acceptance with the Secretary of the Interior and shall also establish the line of said road and file a map thereof with the Secretary of the Interior, within one year of the date of said acceptance, when the said Secretary shall withdraw the lands embraced in this grant from market.

Sec. 20. *And be it further enacted*, That whenever said Burlington and Missouri River Railroad Company shall have completed twenty consecutive

miles of the road mentioned in the foregoing section, in the manner provided for other roads mentioned in this act, and the act to which this is an amendment, the President of the United States shall appoint three commissioners to examine and report to him in relation thereto; and if it shall appear to him that twenty miles of said road have been completed as required by this act, then upon certificate of said commissioner[s] to that effect, patents shall issue conveying the right and title to said lands to said company on each side of said road as far as the same is completed, to the amount aforesaid; and such examination, report and conveyance by patents shall continue from time to time, in like manner, until said road shall have been completed. And the President shall appoint said commissioners, fill vacancies in said commission as provided in relation to other roads mentioned in the act to which this is an amendment. And the said company shall be entitled to all the privileges and immunities granted to the Hannibal and St. Josephs Railroad Company by the said last mentioned act, so far as the same may be applicable: Provided, That no government bonds shall be issued to the said Burlington and Missouri River Railroad Company to aid in the construction of said extension of its road: And provided further,

Commissioners to examine road and report to the President.

No government bonds to the B. & M. R. R. R. Co.

That said extension shall be completed within the eriod of ten years from the passage of this act.

Cost of surveying, etc., to be paid before lands are patented.

Sec. 21. *And be it further enacted*, That before ny land granted by this act shall be conveyed to any ompany or party entitled thereto under this act, here shall first be paid into the Treasury of the Jnited States, the cost of surveying, selecting and onveying the same by the said company or party in nterest as the titles shall be required by said com- any, which amount shall, without any further ap- ropriation, stand to the credit of the proper account, o be used by the Commissioner of the General Land Office, for the prosecution of the survey of the public nds along the line of said roads, and so from year o year, until the whole shall be completed, as pro- ided under the provisions of this act.

Power of Congress to alter or amend. See Sec. 18, Act July 1, 1862.

Sec. 22. And be it further enacted, That Con- ress may at any time alter, amend, or repeal this act.

Approved, July 2, 1864.

Ch. 246. (14 Stat. 244.)

July 25, 1866.

**An Act to authorize the construction of certain bridges, and to establish them as post roads.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Bridge may be built across the Mississippi River at Quincy, Illinois, and railroad tracks laid thereon.

That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose, to build a bridge across the Mississippi River at Quincy, Illinois, and to lay on and over said bridge railway tracks, for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge, under the limitations and conditions hereinafter provided. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said river, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches.

Trains may cross for compensation.

Question of obstruction to navigation may be tried where.

Bridge may be built with draw or unbroken spans.

Sec. 2. *And be it further enacted*, That any bridge built under the provisions of this act may, a

the option of the company building the same, be built as a drawbridge, with a pivot or other form of draw, or with unbroken or continuous spans: *Provided*, That if the said bridge shall be made with unbroken and continuous spans, it shall not be of less elevation in any case than fifty feet above extreme high-water mark, as understood at the point of location, to the bottom chord of the bridge, nor shall the spans of said bridge be less than two hundred and fifty feet in length, and the piers of said bridge shall be parallel with the current of the river, and the main span shall be over the main channel of the river and not less than three hundred feet in length: *And provided also*, That if any bridge built under this act shall be constructed as a drawbridge, the same shall be constructed as a pivot drawbridge with a draw over the main channel of the river at an accessible and navigable point, and with spans of not less than one hundred and sixty feet in length in the clear on each side of the central or pivot pier of the draw, and the next adjoining spans to the draw shall not be less than two hundred and fifty feet; the said spans shall not be less than thirty feet above low-water mark, and not less than ten above extreme high-water mark, measuring to the bottom chord of the bridge, and the piers of said bridge shall be parallel with the current

Height, if made with unbroken spans.

Length of spans.

Pivot drawbridge, with draw over main channel, and spans, etc.

Draw to be opened promptly, except, etc.

of the river: *And provided also*, That said draw shal be opened promptly upon reasonable signal for th passage of boats, whose construction shall not b such as to admit of their passage under the perma nent spans of said bridge, except when trains ar passing over the same; but in no case shall unneces sary delay occur in opening the said draw during o after the passage of trains.

Bridges constructed according to this act, to be lawful structures and post routes.

Sec. 3. *And be it further enacted*, That an bridge constructed under this act, and according t its limitations, shall be a lawful structure, and sha be recognized and known as a post route; upo which, also, no higher charge shall be made for th transmission over the same of the mails, the troop and the munitions of war of the United States, tha the rate per mile paid for their transportation ov the railroads or public highways leading to the sa bridge.

Chicago, Burlington, and Quincy Railroad Company may build a railroad bridge across the Mississippi.

Sec. 4. *And be it further enacted*, That it sha be lawful for the Chicago, Burlington, and Quin Railroad Company, a corporation whose road h been completed to the Mississippi River, and co nects with a railroad on the opposite side there having first obtained authority therefor from t States of Illinois and Iowa, to construct a railro bridge across said river, upon the same terms, in t

same manner, under the same restrictions, and with the same privileges, as is provided for in this act in relation to the bridge at Quincy, Illlinois.

Bridge may be built across the river at Hannibal, Missouri;

Sec. 5. *And be it further enacted*, That a bridge may be constructed at the town of Hannibal, in the State of Missouri, across the Mississippi River so as to connect the Hannibal and Saint Joseph Railroad with the Pike County and Great Western railroads of Illinois, on the same terms and subject to the same restrictions as contained in this act for the construction of the bridge at Quincy, Illinois.

between Prairie du Chien and North McGregor;

Sec. 6. *And be it further enacted*, That a bridge may be constructed across the Mississippi River between Prairie du Chien, in the State of Wisconsin, and North McGregor, in the State of Iowa, with the consent of the legislatures of Wisconsin and Iowa, on the same terms and subject to the same restrictions as are contained in this act for the construction of the bridge at Quincy, Illinois.

between Keokuk and Hamilton;

Sec. 7. *And be it further enacted*, That the Keokuk and Hamilton Mississippi Bridge Company, a corporation existing under the laws of the State of Iowa, and the Hancock County Bridge Company, a corporation existing under the laws of the State of Illinois, be and are hereby authorized to construct and maintain a bridge over the Mississippi River be-

tween Keokuk, Iowa, and Hamilton, Illinois, of the same character, description and construction as provided in this act for the bridges at Quincy and Burlington; and the said bridge, in its use and operation, shall be subject to the same restrictions that apply to said bridges at Quincy and Burlington by the terms of this act.

between Winona and opposite bank of river;

Sec. 8. *And be it further enacted*, That the Winona and Saint Peter Railroad Company, a corporation existing under the laws of the State of Minnesota, is hereby authorized to construct and operate a railroad bridge across the Mississippi River between the city of Winona, in the State of Minnesota, and the opposite bank of the said river, in the State of Wisconsin, with the consent of the legislatures of the States of Minnesota and Wisconsin; and said bridge by this section authorized is hereby declared a post route, and subject to all the terms, restrictions, and requirements contained in the foregoing sections of this act.

between Dunleith and Dubuque;

Sec. 9. *And be it further enacted*, That a bridge may be constructed and maintained across the Mississippi River, between Dunleith, in the State of Illinois, and Dubuque, in the State of Iowa, with the consent of said States previously given or hereafter acquired, with the same privileges, upon the same

terms, and under the same restrictions as are contained in this act for the construction of a bridge at Quincy, Illinois.

at the city of Kansas;

Sec. 10. *And be it further enacted*, That any company authorized by the legislature of Missouri may construct a bridge across the Missouri River, at the city of Kansas, upon the same terms and conditions provided for in this act.

between the city of Saint Louis and East Saint Louis.

Sec. 11. *And be it further enacted*, That the "Saint Louis and Illinois Bridge Company", a corporation organized under an act of the general assembly of the State of Missouri, approved February fifth, eighteen hundred and sixty-four, and an act amendatory of the same, approved February twentieth, eighteen hundred and sixty-five, and also confirmed in its corporate powers under an act of the legislature of the State of Illinois, approved eighteen hundred and sixty-four, or any other bridge company organized under the laws of Missouri and Illinois, be, and the same is hereby, empowered to erect, maintain, and operate a bridge across the Mississippi River, between the city of Saint Louis, in the State of Missouri, and the city of East Saint Louis, in the State of Illinois, subject to all the conditions contained in said act of incorporation and amendments thereto, and not inconsistent with the following

terms and provisions contained in this act. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said waters, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches.

Question of obstruction, where may be tried.

Bridge to be built with unbroken spans.

Sec. 12. *And be it further enacted*, That the bridge authorized by the preceding section to be built shall not be a suspension bridge, or drawbridge, with pivot or other form of draw, but shall be constructed with continuous or unbroken spans, and subject to these conditions: First, that the lowest part of the bridge or bottom chord shall not be less than fifty feet above the city directrix at its greatest span. Second, that it shall have at least one span five hundred feet in the clear, or two spans of three hundred and fifty feet clear of abutments. If the two latter spans be used, the one over the main steamboat channel shall be fifty feet above the city directrix, measured to the lowest part of the bridge at the centre of the span. Third, no span over the water at low-water mark shall be less than two hundred feet in the clear of abutments.

Conditions. Height and length of spans.

Act may be altered, etc.

Sec. 13. *And be it further enacted*, That the right to alter or amend this act, so as to prevent or

remove all material obstructions to the navigation of said river by the construction of bridges, is hereby expressly reserved.

Approved, July 25, 1866.

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Ch. 67. (16 Stat. 430.)

Feb. 24, 1871.

**An Act to authorize the Union Pacific Railroad Company to issue its Bonds to construct a Bridge across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That for the more perfect connection of any railroads that are or shall be constructed to the Missouri river, at or near Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company be, and it is hereby, authorized to issue such bonds, and secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge over said river, and the tracks and depots required to perfect the same, as now authorized by law of Congress; and said bridge may be so constructed as to provide for the passage of ordinary vehicles and travel, and said company may levy and collect tolls

Union Pacific Railroad Co. may issue bonds, etc., to construct, etc., a bridge across the Missouri river at Omaha.

Construction of bridge; tolls, etc.

Empowered, governed and limited by provisions of Act of 1866.

and charges for the use of the same; and for the use and protection of said bridge and property, the Union Pacific Railway Company shall be empowered, governed and limited by the provisions of the act entitled "An act to authorize the construction of certain bridges, and to establish them as post roads," approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto:

Eastern terminus of railroad not to be changed.

*And provided*, that nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company or its successors, from its obligation as established by existing laws: *Provided also*,

Congress may regulate tolls and fares.

That Congress shall at all times have power to regulate said bridge, and the rates for the transportation of freight and passengers over the same, and the local travel hereinbefore provided for.

Amount of bonds.

And the amount of bonds herein authorized shall not exceed two and a half millions of dollars: *Provided*,

Draws.

That if said bridge shall be constructed as a draw-bridge, the same shall be constructed with spans of not less than two hundred feet in length in the clear on each side of the central or pivot pier of the draw.

Approved, February 24, 1871.

OCTOBER TERM, 1894.

No. 18.

UNION CITY AND FORT DODGE RAILROAD COMPANY,
Complainant and Appellee,
vs.
UNION PACIFIC RAILROAD COMPANY, Defendant and
Appellant.

APPELLEE'S REPLY BRIEF ON APPEAL, WITH AN APPENDIX CONTAINING EXTRACTS FROM BRIEFS OF COUNSEL IN THE ROCK ISLAND CASE.


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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 1894.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

## No. 18.

MASON CITY AND FORT DODGE RAILROAD COMPANY,
COMPLAINANT AND APPELLEE,

*vs.*

UNION PACIFIC RAILROAD COMPANY, DEFENDANT AND APPELLANT.

## APPELLEE'S REPLY BRIEF ON APPEAL, WITH APPENDIX, CONTAINING EXTRACTS FROM BRIEFS OF COUNSEL IN THE ROCK ISLAND CASE.

I.

**In providing in the act of 1871 "for the use and protection of said bridge and property, the said Union Pacific Railroad Company shall be empowered, governed and limited by the provisions of the act" of 1866, the Congress had in mind the substantial provisions for the use of the property by other companies, and not the minor provisions of sections two and three, which are otherwise provided in the act of 1871 and in the Union Pacific charter.**

Reply to appellants' contention that secs. 2 and 3, act 1866, only provisions referred to in act 1871.

On pages 36 *et seq.* and especially under the head of "*Post-routes*," the counsel classifies the particular things in the act of 1866, in reference to the use and

protection of the bridge, which they claim Congress had in mind in referring to this act. It is argued that there were three things so provided by sections 2 and 3, viz:

"(1.) In connection with the use of the bridges when built as draw-bridges." We have seen that this is not only provided for by the act of 1871, but so provided for as to conflict with the act of 1866.

"(2.) The protection of the bridges, *i. e.*, that they should be lawful structures."

It was evidently intended by section three of the act of 1866 (Appendix to our brief, p. 422) to provide that any bridges built under the provisions of the various sections of the act, should be lawful structures. This was the natural result of any bridge being built according to the law of Congress, and was entirely unnecessary in the act of 1871.

"(3). The *use* of the bridges by the Government—that they should be *post-routes*."

Let us consider this claim of the appellants under section three. It is stated by counsel that "There is no provision in the Pacific Railroad acts fully, specifically and clearly declaring that the Union Pacific bridge across the Missouri river should be a post-route and open to the use of the Government of the United States as such" (Brief, page 37). By section six of the original charter of the Union Pacific Company (Appendix, page 374) this bridge was made a post-route, and the use thereof by the Government regulated, if it was a part of the Union Pacific railroad. And by a general act of Congress in 1866 (14 Stat., 66) it was made a post-route whether it was a part of the Union Pacific road or not. This latter act created all railroads and "bridges" post-routes, so that it is immaterial whether able lawyers and jurists differed as to the Union Pacific bridge being a part of the Union Pacific road or not.

Congress could not therefore have had in mind the use of the bridge as a post-route, nor the use of the bridge by the Government for any purpose. The provision of section three of the act of 1866, providing that no higher charge shall be made for the transmission of the mails, troops and munitions of war of the United States than the rate charged for their transportation over the public highways leading to said bridge, of course could not apply. It was held by this court not to apply, because the provisions of section six of the original charter of the Union Pacific Company conflicts with it and is exclusive in providing for the use of the bridge by the Government, and the compensation therefor (*Union Pac. R. Co. v. United States*, 104 *U. S.*, 662; *Union Pac. R. Co. v. United States*, 117 *U. S.*, 355).

But it is urged that at that time it was not known that the eastern terminus of the Union Pacific road was in Iowa, and that therefore one of the objects Congress had in mind in referring to the act of 1866 was to create it a post-route and thus make sure that the eastern terminus should be in the State of Iowa. What the fact of its being a post-route had to do with the eastern terminus of the road, we are unable to see. We have already referred to the fact that in the decision of the *Hall* case (91 U. S., 343)—where this court decided that the eastern terminus of the Union Pacific road was in Council Bluffs,—the court never referred to the question of its being a post-route, and the fact whether it was a post-route or not was absolutely and entirely immaterial in that case. It is perfectly evident by a reference to the act of 1871 that Congress intended by that act to make sure that the eastern terminus of the Union Pacific road should be in Council Bluffs, and the Congress did not do this by any indirect method of referring to some other act making bridges post-routes, but did

it by direct and positive statement in the act of 1871, as follows (Appendix to original brief, page 428):

> "*And provided*, That nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company or its successors from its obligation as established by existing laws."

We submit, therefore, that when Congress passed the act of 1871 and provided therein that in the *use* and protection of the bridge the Union Pacific Company should be empowered, governed, and limited by the act of 1866, it did not have in mind these unimportant matters of detail as to the length of the spans and as to its being a drawbridge, which were otherwise provided for, nor the use of the bridge for compensation which necessarily conflicted with the Union Pacific charter, nor the question of post routes, which was already provided for by act of Congress. It did have in mind the great controlling principle declared in the act of 1871, of making connections between the railroads then constructed or which might thereafter be constructed to the Missouri river from the east and the west.

In view of the fact that, in the act of 1866 and in other acts, Congress had uniformly provided that all railway companies should have a right to the use of these bridges across the waterways, and in view of the fact that in other acts of Congress the act of 1866 had been referred to for the purpose of regulating this use, we are asked to believe that, in this most important bridge connecting this great Government railroad at its eastern terminus, Congress did not have in mind its use by other railway systems.

Again and again it is urged by counsel for the appellant that the object of the act of 1871 was to aid

the Union Pacific Company to construct a bridge, depots, and tracks, for the purpose of making a more perfect connection between the Union Pacific railroad and the railroads terminating on the western boundary of Iowa at the point of the eastern terminus of the Pacific Company's line, to-wit, that point fixed by the President. And it is argued that this more perfect connection was a more perfect connection than by the rude methods of ice-bridges and ferries. The counsel cites the language of Mr. Justice Strong in *Union Pacific R. Co. v. Hall*, 91 U. S., 343, 346, 350, 352, 353. The court was there alone considering the act of 1862 and the act of 1864. Section 15 of original charter required the Union Pacific to allow any other company to make connection with it, and section 9 of the act of 1864 provided as follows:

> "SEC. 9. *And be it further enacted*, That, to enable any one of said corporations to make convenient and necessary connections with other roads, it is hereby authorized to establish and maintain all necessary ferries upon and across the Missouri river and other rivers which its road may pass in its course, and authority is hereby given said corporation to construct bridges over said Missouri river," etc.

Then follows provision as to the manner of construction of the bridge over the Missouri river (Appendix, p. 402).

It was evidently the intention of Congress that the Union Pacific Company should make connections with Iowa roads, thus forming continuous lines of communication. This was all the authority needed to substitute a railroad bridge for the ice-bridges and ferries.

When this original legislation was passed, no railroads had been constructed or projected reaching the Missouri river from the West. But in 1871 a differ-

ent condition existed. As said by the Chief Justice in the opinion in the *Rock Island* case:

> "In 1871, several roads had been built from the East to Council Bluffs, and others were building, and roads were in process of construction in Nebraska with Omaha as their terminus."

Then came the act of 1871, which did not provide for a more perfect connection between the Union Pacific and the roads in Iowa, but for a more perfect connection "of any railroads that are or shall be constructed to the Missouri river, at or near Council Bluffs, Iowa, and Omaha, Nebraska," being the same language used in the act of 1866 for the more perfect connection of the railroads built to the opposite sides of the river at Quincy, Illinois. Not for a connection with the Union Pacific, but the property was to be constructed to be used to connect all railroads.

It was not this language Mr. Justice Strong was construing in the *Hall* case, but the language of the original charter and the amendment of 1864, to find out whether it was not the intention of Congress to compel the Union Pacific Company to make its eastern terminus in Iowa, and therefore to bridge the river and to operate the line as a whole. It therefore is evident that Congress, in 1871, had a different condition to deal with, and, as a condition of this grant, required something more of the Union Pacific Company than was required in its original charter.

Illinois and St. Louis bridge subject to use by other roads.

On page 64 *et seq.* of counsel's brief it is argued that in referring to the act of 1866 by the act of 1871, Congress had reference only to provisions which were general in their character, and not those which were special, and did not apply to all of the sections of the act. And that as the provision for the use of the bridge by other companies was not contained in section eleven, it was therefore special and not general. We claimed in our original brief (Appendix,

page 297) that by the charter of the St. Louis and Illinois Bridge Company it was required to allow any other railway company to run its trains over the bridge. But in view of the elaborate argument of the counsel, we submit the following additional considerations:

Section eleven of the act of 1866 (Appendix, page 425) made the bridge of the St. Louis and Illinois Bridge Company "subject to all the conditions contained in said act of incorporation and amendments thereto," thus incorporating into this act the provisions of the charter requiring its use by other railway companies, in lieu of making it subject to the terms and conditions of the first section of the act in relation to the Quincy bridge. Congress was evidently not content to leave this as it existed in the original charter for, in authorizing the bridge, it made it subject to these conditions and stipulations as to use.

When this section eleven was passed, there was only one bridge company in existence, and that was the St. Louis and Illinois Bridge Company, therein referred to. At that time the Illinois and St. Louis Bridge Company had not been chartered.(*) These were passed in 1867 and 1868. So that at the time of the passage of the act of 1866, we are dealing alone with the St. Louis and Illinois Bridge Company, which was incorporated under the laws of Missouri, and confirmed in its corporate powers by the State of Illinois, as recited in section eleven of the act of 1866. By the act of incorporation in Missouri, it obtained the right to build a bridge in that State but no right to build a bridge in Illinois. Where it ob-

(*) NOTE.—The only difference between these two companies is that the words "St. Louis" and "Illinois" are inverted. One was incorporated by the State of Missouri, and the other by Illinois.

tained those rights was by the confirmatory act (Appendix, page 310). Referring to these two acts, it will be seen that the original charter granted by Missouri did not contain the provisions subjecting the bridge to use by other companies, but did contain this provision (Appendix to original brief, page 305):

> "And should said bridge be built with railroad tracks, the said company is hereby authorized to make such terms and rates with railroad companies for the passage of trains of freight and passengers as may be agreed upon between said St. Louis and Illinois Bridge Company and the said railroad companies; and in case of disagreement, the amount of compensation to be paid for passage over said bridge, as aforesaid, shall be determined by five referees," etc.

Referring now to the confirmatory act, it was provided in section one that the persons named in the act of incorporation of the State of Missouri should have the right to organize and form a corporation in accordance with said act, and to construct the bridge with certain modifications, specified. By section three, the bridge is specifically made subject to use by any other railway company, and provision is made for arriving at the compensation; and it is provided that, if it denies any other company this right, it shall forfeit its rights and privileges under this charter. By section eight it is provided that it "shall not make any discrimination, or exercise partiality, in fixing the rates for carrying persons, or freight, or trains, over said bridge." This is the confirmatory act which Congress described in section eleven of the act of 1866, and by its acceptance it became a part of the charter of the St. Louis and Illinois Bridge Company. And, as we have hereto-

fore shown, it has been from that day published by the bridge company as a part of its charter.

It is also worthy of note that, after the incorporation of the Illinois and St. Louis Bridge Company in 1867, and the passage of the consolidation act in 1868, to wit, on July 20, 1868, Congress passed another act (15 Stat., 123) recognizing and declaring the consolidated company to be a corporation by that name, with full power to construct a bridge across the Mississippi river in conformity with the acts of the assemblies of the States of Missouri and Illinois "not inconsistent with the provisions of the act to which this act is amendatory," thereby again imposing the obligations imposed under the original charter.

Congress intended this bridge to be subject to use by other roads.

But the counsel says that, had Congress intended to make this most important provision of the act of 1866 apply to the Omaha bridge, it would have said so in clear and specific terms, and not by indirect and remote reference. We submit that every section of this act, except the eleventh, where a bridge is authorized to be constructed, reference is made to the first section for this important provision, and that, before the passage of the act of 1871, Congress had, in other acts, made like reference to the act of 1866 and other acts authorizing bridges. For instance, on February 21, 1868, Congress passed an act authoriting a bridge across the Mississippi river at La Crosse, Wisconsin, subject fo the terms, conditions, restrictions and requirements of the act of July 25, 1866. And on pages 326 to 333 of appendix to original brief will be found several acts where like reference is made to this or other acts of Congress.

But the argument of counsel shows too much. They claim that the provisions of sections two and three, being in their nature general, apply to all the bridges in the act and therefore are the ones referred to by the act of Congress in the act of 1871. The

provisions of section two could not have applied to the St. Louis bridge, under section eleven, because everything provided for in section two is otherwise provided for in the charter, which is inconsistent with these provisions. To illustrate: The provisions of section two of the act of 1866 provides that the bridge may be built as a draw-bridge, designates the height of spans, etc. This is absolutely inconsistent with section six of the St. Louis and Illinois Bridge Company charter, as amended by the act of February 20, 1865 (Appendix, pages 303, 306). By section six of the latter act, the company is not authorized to build a draw-bridge, but must build it of sufficient height to admit of the passage of steamboats; and the manner of construction of the bridge is fully provided for. Section twelve of the act of 1866 also is not in harmony with this. Again, the tolls and compensation to be received is specifically provided for by section seven of the St. Louis and Illinois Bridge Company charter (Appendix, pages 304, 305). We have seen that prior to 1871 all railroad bridges were created post-routes. So it may be argued with equal confidence that the provisions of sections two and three were special as much as the provisions of section one.

Let us here briefly outline a summary of the reasons why the act of 1866 applied to the Omaha bridge, depot, approaches and tracks in question, and subjected the property to the use of other companies:

(A.) Because this court so held, ten years ago, in the case of *Chicago, Rock Island & Pacific Ry. Co.* v. *Union Pacific Ry. Co.*, 163 *U. S.*, 564. This should ordinarily be sufficient, but as counsel seeks to have that case overruled, we add the following.

(B.) When the act of 1871 was passed, it had become the settled policy of Congress to make all railway bridges across public waterways open to the use

of other companies (Appendix B, page 325 *et seq.* of Original Brief).

(C.) The act of 1871 referred to the act of 1866 in substantially the same manner as other previous acts of Congress had done.

(D.) At the time the act of 1871 was passed, railroads were in process of construction to opposite sides of the Missouri river at Omaha, and it is in evidence that it was the desire of the people of Omaha to make this the crossing of all railways.

(E.) The Union Pacific Company was, by the act of 1862 and the act of 1864, authorized to build a bridge and required to make connections with Iowa railroads in Council Bluffs, so that could not have been the connection referred to and intended by the act of 1871.

(F.) The objects of the construction of the bridge, depots, approaches and tracks connected therewith was, as declared, "for the more perfect connection of any railroads that are or shall be constructed to the Missouri river at or near Council Bluffs, Iowa, and Omaha, Nebraska," being the same language used in the act of 1866, to wit: "For the more perfect connection of any railroads that are or shall be constructed to said river at or opposite said point; and that, when constructed, all trains of all roads terminating at said river at or opposite said point, shall be allowed to cross the said bridge, for reasonable compensation;" therefore presumably intended to accomplish the same object—not a connection with the Union Pacific railroad, but a connection between all roads, according to the letter and spirit of the language. This is the "use * * * of said bridge and property" referred to in the act of 1871.

(G.) If the foregoing provision as to the use of the bridge is not what was referred to in the act of 1871, then nothing could have been referred to, because the provisions of sections two and three of said act

of 1866 could not apply, and there would be no provision of the act of 1866 by which the use of said bridge and property could be governed and limited.

(H.) The negotiations leading up to the donation of $250,000 in bonds by the county and $200,000 in bonds by the city, which were sold and the proceeds used to purchase the grounds for depot, terminals, bridge approaches and tracks, show that the Union Pacific Company and the people of Omaha and Douglass county intended to make this the crossing and connection for all railroads (Original Brief, pages 20 to 30). That contract contained the same recitals as do the act of 1866 and the act of 1871, to wit: "that the parties hereto desire to arrange for the more perfect connection of any railroads that are or shall be constructed to the Missouri river at or near Council Bluffs, Iowa, or Omaha, Nebraska." In consideration of which, the Union Pacific Company agreed to build the bridge and depot, and to allow the trains, cars and engines of all railroads then or thereafter running into and out of Omaha and Council Bluffs to have unobstructed access *to* and over said bridge and its approaches, for reasonable compensation, without discrimination, hindrance, preference or delay—the object being there declared to make a "virtual and operating connection upon said transfer grounds between all railroads desiring such connection which do or may begin or end in or pass through Omaha or Council Bluffs, and the trains and business of said roads."

It is further evidenced by the fact that the Union Pacific Company has for years made like contracts with all other companies; and now treats it, in its time-tables and in its operations, as terminal grounds and yards for the use of all lines of railway.

(I.) That in making the original bridge mortgage of 1871 and the supplemental bridge mortgage of 1885 (Transcript of Pleadings and Orders, pages 66

and 95), and especially in the renewal bridge mortgage (page 101) it is provided in substance that the mortgage includes not only the bridge but the "depots at Council Bluffs and Omaha, aforesaid, and the railroad thereover, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances and to connect the same with the lines of any railroad that are now or shall hereafter be constructed to the Missouri river at Council Bluffs, Iowa, or Omaha, Nebraska," clearly showing that the first and second Pacific companies understood the meaning of the act of Congress.

As we have seen, not only is the practical construction of the parties of great weight, but, in construing a grant or law, the previous history of the legislation, and the circumstances attendant at the time it was made, are important factors (Cavazos *v.* Trevino, 6 Wallace, 773).

## II.

## The provisions of the bridge act of 1871 did not in any way impair the obligation of the first mortgage of the Union Pacific Railroad Company.

Bridge act, 1871, did not impair Pacific first mortgage.

It seems to us that the *Union Pacific Sinking Fund cases*, 99 U. S., 700, are sufficient authority to sustain the right of Congress to amend the Union Pacific charter, requiring it to allow any other company to run its trains over the bridge and tracks, sufficient to make connections between eastern and western lines. But as the counsel cites many authorities and takes up considerable of their brief in discussing this question, we may be pardoned for making a few suggestions in reply.

It is a sufficient answer to all the argument of counsel that not only did the Union Pacific Railroad

Company accept the provisions of the act of 1871, but the bondholders also accepted it, and cannot now be heard to complain that the act imposed any burden upon the Union Pacific Company. Counsel says, page 117 of Brief:

> "We will admit that as between Congress and the Union Pacific Railroad Company, the bridge could be so burdened by agreement between them, but we contend, as to the first-mortgage bondholders and their vested rights as to the security of the bridge, any such proceeding, unless with their *consent*, would be entirely void and not binding on them."

Again, on page 118 *et seq.*, counsel says:

> "We admit that Congress could depreciate the lien of the United States as to the subsidiary bonds by imposing further burdens on the bridge, as, making it subject to the use of other roads, if so desired; and we also admit that the Union Pacific Railroad Company could agree to depreciate the value of its bridge by accepting the condition that it might be used by any other road desiring it, if it desired; but we contend that, as to the *lien and vested right* which the first-mortgage bondholders acquired by the mortgage of 1865, the value of the property covered by the lien, which included the bridge, could not be impaired or depreciated in any way by Congress or any one else without the consent and acquiescence of said bondholders. That is to say, Congress could not, as to the bondholders, without their consent, impose the burden on this bridge of permitting it to be used by all other roads (as it claimed it endeavored to do by the act of 1871) and thus depreciate to that extent the value of the bondholders' security,

and therefore, as to the bondholders, that provision would be of no force and not binding."

We shall consider these points under two heads:

(1st.) Conceding, for the purposes of this argument, that this law did impose a burden and was something more than a mere regulation of the use of the bridge for a reasonable compensation, still Congress, under its reserve power to "alter, amend or repeal this act" *could* impose this burden; and

(2d.) The Union Pacific Company, having requested Congress to amend its charter in order to authorize it to issue additional bonds, accepted the terms of the act by making the mortgage and these bonds having been used to construct a bridge, depots and line of railway not in existence at the time of the first mortgage was made, and the first-mortgage bondholders, with a full knowledge of all these facts, having foreclosed their mortgage and taken the property, must be considered to have assented to the conditions imposed as an easement or public right upon the property.

FIRST.

Under the first head we will cite some additional authorities, and review some of the cases cited by counsel. See:

*United States v. Union Pacific Railway Co*, 160 *U. S.*, 36.

*Greenwood v. Freight Company*, 105 *U. S.*, 13.

*Spring Valley Water Works v. Schottler*, 110 *U. S.*, 348.

*Hamilton Gas Light & Coke Co. v. Hamilton City*, 146 *U. S.*, 258.

*Louisville Water Co. v. Clark*, 143 *U. S.*, 1.

We shall not review these cases at length in the brief, but simply mention the point decided in each.

United States v. Union Pac. Ry. Co., 160 U. S., 36, commented upon.

Counsel cite the case of *United States v. Union Pacific Railway Co.*, 160 U. S., 36, in their brief. The court there held that the reservation of the power to add to, alter, amend or repeal the Union Pacific charter gave Congress the power to annul a contract theretofore entered into between the Union Pacific Railway Company and certain telegraph companies, and to require the Union Pacific Company to construct and operate its own telegraph line. The court will remember that, under the nineteenth section of the Union Pacific charter, it is provided in substance that the railway company was authorized to enter into arrangements with certain telegraph companies, therein named, "and if said arrangement be entered into and the transfer of said telegraph line be made in accordance therewith to the line of said railroad and branches, such transfer shall, for all the purposes of this act, *be held and considered a fulfillment on the part of said railroad companies of the provisions of this act in regard to the construction of said line of telegraph.*" The court considered the case as though the Western Union Company was the successor to all the rights of these companies provided for by this section; and held that, while it was a compliance with the charter, that Congress could at any time, in furtherance of its reserve power, require the Union Pacific Company to construct its own telegraph line and could set aside the contracts theretofore made. The court said:

> "On behalf of the telegraph company it is contended that it was beyond the power of Congress to so legislate as 'to impair the contracts, first, that between the United States and the several companies mentioned in the act of 1862; and, second, those between the railway company and this defendant.' We perceive no ground on

which this contention can properly rest. It has already been fully examined. As we have seen, Congress, in the act of 1862, expressly reserved the power not only to alter, amend or repeal this act but to add to its provisions. To what has already been said as to the power of Congress, under this reserved power, we may add that the object of such reservation is to enable the legislative department to protect the public interests, and 'to preserve to the State control over its contract with the corporators, which, without that provision, would be irrepealable and protected from any measure affecting its obligation.' *Tomlinson v. Jessup*, 15 *Wall.* 454, 457, 458."

In *Greenwood v. Freight Company, supra*, this court held, by Mr. Justice Miller, that the reserved power to alter, amend or repeal a charter gave the city of Boston the right to repeal a franchise given to the Marginal Company, and deprive it of the right to maintain its railroad tracks in the street. The court said:

Greenwood v. Freight Co., 105 U. S. 13.

"It results from this view of the subject that whatever right remained in the Marginal Company to its rolling stock, its horses, its harness, its stables, the debts due to it, and the funds on hand, if any, * *it no longer had the right to run its cars through the streets or any of the streets of Boston.* It no longer had the right to cumber these streets with a railroad track which it could not use, for these belonged by law to no person of right, and were vested in defendants only by virtue of the repealed charter.

"It was, therefore, in the power of the Massachusetts legislature to grant to another cor-

* Italics are ours.

poration, as it did, the authority to operate a street railroad through the same streets and over the same ground previously occupied by the Marginal Company."

Spring Valley Water Works v. Schottler, 110 U. S., 348.

In *Spring Valley Water Works v. Schottler*, *supra*, this court held that under the reserved power of amendment, the legislature had authority to repeal a provision of law under which water works companies were incorporated providing that the rates to be charged for water should be fixed by commissioners to be appointed in part by the water works company and in part by the municipal authorities; and to place in the municipal authorities the sole power to fix the rates.

Hamilton Gas Light & Coke Co. v. Hamilton City, 146 U. S., 258.

In *Hamilton Gas Light & Coke Co. v. Hamilton City*, *supra*, the court had under consideration a grant of the exclusive right to lay pipes for conducting gas in the streets of a city. The court held that the grant was valid at the time made, because there was legislative authority, but that, under the reserved power to amend the law, the legislature could take away the exclusive right. The court said:

> "If the statute under which the plaintiff became incorporated be construed as giving it the exclusive privilege, so long as it met the requirements of law, of supplying gas light to the city of Hamilton and its inhabitants by means of pipes laid in the public ways, there is no escape from the conclusion of such a grant, as respects at least its exclusive character, was subject to the power of the legislature, reserved by the State constitution, of altering or revoking it. This reservation of power to alter or revoke a grant of special privileges necessarily became a part of the charter of every corporation formed under the general statute providing for the formation of corporations. A legislative grant

to a corporation of special privileges, if not forbidden by the constitution, may be a contract, but where one of the conditions of the grant is that the legislature may alter or revoke it, a law altering or revoking or which has the effect to alter or revoke the exclusive character of such privileges, cannot be regarded as one impairing the obligation of the contract, whatever may be the motive of the legislature, or however harshly such legislation may operate, in the particular case, upon the corporation or parties affected by it. The corporation, by accepting the grant subject to the legislative power so reserved by the constitution, must be held to have assented to such reservation."

An examination of the authorities cited by counsel will show that they do not in the remotest degree affect the position we take, and several of the cases are in direct conflict with the decisions of this court.

Rice v. Minn. & N. W. R. Co., 1 Black, 360, commented upon.

In the case of *Rice v. Minnesota & Northwestern Railroad Co.*, 1 *Black*, 360, the charter of the Minnesota & Northwestern R. R. Co., chapter 47, Laws of 1854, amended by chapter 48, Laws of 1855, granting the lands to the Minnesota & Northwestern R. R. Co., did not contain any provision authorizing the legislature of the Territory or State of Minnesota to repeal, amend or modify the act until after twenty years from its passage, and then only on payment of damages sustained. This charter is the present charter of the Chicago, Great Western Railway Company, and there was no question involved in the case, of the power of the legislature to amend or repeal a charter or grant under this reserved power. The only question was, whether the grant ever took effect so as to create a contract.

Coast Line R. Co. v. City of Savannah, 30 Fed., 646, commented upon.

The case of *Coast Line R. Co. v. City of Savannah*, 30 *Fed.*, 646, is in direct conflict with the decision of this court in the case of *Sioux City St. Ry. Co. v. Sioux City* 138 *U. S.*, 99, in which this court held that an ordinance authorizing a street railway company to lay its tracks in the street, and providing that it should "pave or macadamize, in the time and manner directed, the space between the rails, and shall thereafter keep the same, between the rails, in good repair, and shall keep in good condition and repair the space between the tracks on all bridges that they cross," did not imply a contract that it should not be required to pay for paving outside the rails, and that, under the reserved power to alter or amend the franchise of the corporation it could be required to pay for paving such other part of the street, thus placing the decision upon two grounds.

Detroit v. Plank Road Co., 43 Mich., 140, commented upon.

In the case of *Detroit v. Plank Road Co.*, 43 *Mich.*, 140, the supreme court of Michigan held that, under the reserved power of amendment, the legislature could not take away from the turnpike company the right to collect any tolls on some two miles of the road, placing this upon the ground that to take away from the company the right to collect tolls on two miles of its road was destroying that much of its property. Manifestly, under the reserved power to alter or amend, and even in the absence of that reserved power, it could regulate the tolls, provided, under the guise of regulation, it did not destroy the property. In the case at bar, the Congress simply regulated the use of the property for reasonable compensation. The acts of 1871 and 1866 do not purport to fix the compensation, but simply provide that the trains of all other roads shall be allowed to use the property for "reasonable compensation."

People v. O'Brien 111 N. Y., 1, commented upon.

The case of *People v. O'Brien*, 111 *N. Y.*, 1, simply holds that under the reserved power of amendment, the legislature had no power to forfeit ties, rails and

other property of the corporation laid in the street pursuant to a franchise granted. If this decision can be construed to go further than this, it is certainly in conflict with the decision of this court in the case of *Greenwood v. Freight Company*, 105 *U. S.*, 103, hereinbefore cited; but that it does not go further is evidenced from the fact that the supreme court of New York cited this case and distinguished it (page 53 of opinion).

Millar v. R. R. Co., 21 Barb., 511, commented upon.

The case of *Millar v. R. R. Co.*, 21 *Barb.*, 513, holds that the reserved power to amend a charter of a railroad company did not authorize the legislature to take any part of the railway for a right of way of a highway or street, without compensation. This case is not an authority that the legislature, under such a power, would not have a right to regulate the use of the railway, by requiring it to take out grade crossings, or to raise its tracks, for such power has been sustained by the courts of many States. See *New York & N. E. R. Co. v. Bristol*, 151 *U. S.*, 556, where the court held that, under a reserved power to alter or amend a charter, the legislature may compel a railway company to elevate its tracks over highways, although by so doing the railway company might be required to go to great expense in building iron viaducts and bridges and in lowering tracks, which would amount to the destruction of private property. It is evident that the exercise of this power might result in enormous expense to the railway company and great loss of its revenue. It is noticeable in this case that the counsel for the railway company cited the case of *People v. O'Brien*, 111 *N. Y.*, 1, in opposition to the right of the legislature of Connecticut to amend the charter of the New York & N. E. R. Co., requiring it to do away with grade crossings.

Orr v. Brackton Co., 81 Ky., 593, commented upon.

The case of *Orr v. Brackton County*, 81 *Ky.*, 593, is in direct conflict with the case of *Close v. Greenwood*

*Cemetery*, 107 *U. S.*, 466. In the Kentucky case the Supreme Court held that under the power of amendment the legislature could not change the manner of voting stock so as to allow each share of stock one vote. It does not exactly appear how the shares were to be voted under the original charter, but the amendment gave each share of stock a right to one vote. This case cannot be reconciled with *Close v. Greenwood Cemetery*. In that case Congress had incorporated the Greenwood cemetery; the capital stock being represented by 2,500 shares of $50 each, divided among the proprietors according to their respective interests. The trustees were to be elected from among the proprietors, each share being entitled to one vote. Subsequently Congress reduced the number of trustees to five, and provided for the election of three of them by the holders of cemetery lots and two by the original proprietors. The court held that this was within the reserved power of Congress to amend the charter, citing the *Sinking Fund* and other cases.

Johnson v. Goodyear Min. Co., 127 Calif., 4, commented upon.

The case of *Johnson v. Goodyear Mining Co.*, 127 *Cal.*, 4, has no bearing on this case. The statute considered in that case required all corporations to pay their employees once a month, and for a violation of the act they were given a lien on all the property of the corporation. Heavy penalties were also imposed. The court simply held that the act violated the fourteenth amendment, denying to corporations the equal protection of the laws. It is perfectly evident that, under the guise of amending the charter, the legislature could not take away the rights of persons guaranteed under the Constitution of the United States.

Use of property taken for reasonable compensation.

Much is said in this branch of the argument about the Union Pacific property being "*taken*" and "*confiscated*" by this act. No property of the Union Pacific Company has been taken. All that Congress

required by the acts of 1871 and 1866 was that "all trains of all roads terminating at said river at or opposite said point shall be allowed to cross said bridge for reasonable compensation" (Act of 1866, page 9 of Original Brief). This court held in the *Rock Island* case, 163 *U. S.*, 583, 584, that the contract, which the counsel say was followed in this decree, was not a lease of the property; that it did not take from the Union Pacific Company its property, nor the possession thereof; that it merely regulated its use for compensation; that it was what was known as a "running arrangement" or "terminal contract," rather than a lease (page 583 of opinion). The Union Pacific Company makes no claim that the compensation is not reasonable. It is the same compensation charged other companies for like use. It is a well-known fact that it is very common for railway companies to grant running rights over terminals in crowded cities. It is the rule rather than the exception. Can it be possible that, under the reserved power to add to, alter, amend or repeal the charter of the Union Pacific Company, Congress had not power, when granting to it valuable rights, to require it to allow other companies to run their trains over the bridge and tracks and to use the terminals? The Union Pacific Company was powerless to build the bridge and terminals, under the mortgages which it had made. It was prohibited from making any other mortgage prior to the Government mortgage. It went to Congress and asked the right to make a $2,500,000 mortgage for the purpose of constructing a bridge and terminals. In granting this right, the Congress recited the fact that it was done in order to make more perfect connections between the railroads that then were or might thereafter be constructed to the Missouri river at or near Council Bluffs and Omaha. And by regulating its use, by the act of 1866, it required the Union Pacific Com-

pany to allow all other railroads to use these facilities, for the purpose of making connections, for reasonable compensation. If this regulation is not within the reserved power of Congress, we fail to see any case in which Congress can make a reasonable regulation of the use of property.

SECOND.

Act of 1871 accepted by first - mortgage bondholders.

The bridge, depot, approaches and tracks, not being in existence at the time the first mortgage was made, but constructed with money procured under the act of 1871, the first mortgage attached to the property as after-acquired property, and subject to all the obligations as to the use thereof imposed by the act of 1871. The bondholders could not accept the benefits of the act without assuming the obligations. This is true, not only as to the bridge, depot and tracks actually constructed with the money procured from the bonds issued under the act of 1871, but of any part of the track between the depot and South Omaha necessary to connect the eastern with the western lines to effectuate the intention of Congress as declared in the act of 1871.

In several places in the brief of counsel, reference is made to the fact that the bridge was commenced prior to the passage of the act of 1871. We cannot see that this would be in any way material. All these facts were before this court in the *Rock Island* case. But there is no evidence that any work was done upon the bridge, depot, tracks or approaches prior to the passage of the act. The answer admits that the money raised by the bridge mortgages

> " was used by the Union Pacific Railroad Company, during the years of 1871 and 1872, in constructing a bridge across the Missouri river, and tracks and depots connected therewith extending from the eastern terminus of the Union

> Pacific Railroad Company at Council Bluffs in the State of Iowa to a point at about Twentieth street in the city of Omaha, Nebraska, a distance of three and ninety-eight hundredths miles" (Record, Pl. and Orders, page 214).

It appears by the testimony of Mr. Dodge that the company was without funds with which to build its bridge across the Missouri river, and that the company sent him to Washington to procure the passage of the act of 1871. The history of the construction of the bridge is stated in the report of the special master in the foreclosure proceedings and in the opinion of Judge Sanborn (Record, pages 352, 830). Judge Sanborn stated in his opinion in the Government foreclosure case that the bridge division, being the line of road between Council Bluffs and Twentieth street, including the bridge and depot, was not constructed at the time of the making of the first mortgage; and Judge Cornish, in his report, states that the railroad company

> "commenced work thereon, * *or in preparation therefor*, in the latter part of the year 1868 and during the year 1869. That after the year 1869 nothing was done upon the work of constructing said bridge until the year 1871."

He then recited the making of the bridge mortgage under the act of 1871, and that the railroad company,

> "with the moneys derived from the sale of said bonds, built and completed a permanent railroad bridge across the Missouri river between Omaha, Nebraska, and Council Bluffs, Iowa, with the approaches and appurtenances thereto, during the years 1871 and 1872, and that the same was completed in the year 1872.

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* Italics are ours.

"29. That such bridge and approaches consisted of grades and railroad tracks extending from the east line of the railroad company's property between Twelfth and Thirteenth avenues in Council Bluffs, Iowa, in a westerly direction to the east bank of the Missouri river to a connection with the bridge; of a permanent railroad bridge across said river to the westerly bank thereof; and of grades and railroad tracks connecting therefrom westerly through Omaha to a connection with the tracks of said railroad company originally constructed by it at a point at about Twentieth street in said city of Omaha, a distance of three and ninety-eight hundredths (3.98) miles. That the same was not certified to the United States under the provisions of the said acts of July 1, 1862, and July 2, 1864, and that no subsidy bonds or patents of lands were delivered by the United States to said railroad company at the time of or after the construction thereof or based specifically thereon" (Record, vol. 2, pages 830, 831, 832).

So that it appears by the only testimony in the case that this entire bridge division from Council Bluffs to Twentieth street, including the bridge, depot and tracks, was constructed after 1871 and with the moneys obtained by the mortgage made pursuant to the authority given in the act of 1871. To be sure, the Union Pacific Company did have a single track from Twentieth street to South Omaha, constructed as a part of its original line, but, after the establishment of the stock-yards at South Omaha in 1883 and 1884, the Union Pacific Company extended its depot tracks from the bridge to South Omaha (pages 39–41, Original Brief). It is, therefore, clear that when the bondholders and their trustee foreclosed the first-mortgage on the Union Pacific property, and obtained that property, they consented to the terms

of the act of 1871 amending the charter of the Union Pacific Company, under which the larger part of the property was acquired. And we call the court's attention to the fact that at the time of the foreclosure of this first mortgage and the purchase of the property under the decree, by the bondholders' committee representing the bondholders, and its acquisition by the present company, this act of 1871 had been construed in the *Rock Island* case to include the property to South Omaha and to require the Union Pacific to allow its use by any other railroad company, so that it bought this property with this construction placed upon the act, and the present company must have accepted the terms thereof.

III.

## Form of Decree.

Form of decree.

On pages 128 to 136 of counsels' brief, they attack the form of the decree. It is evident they entirely misconceive its terms. It is claimed that the decree grants to the Mason City Company all of the rights conferred by contracts with other companies. Nothing could be farther from the facts. It will be found that as to the description of the property the use of which is granted to the Mason City Company, and as to certain details of operation which have been adopted as uniform details with all companies, the decree has followed the contracts. Let us mention a few of these details. As to the description of the property, the court granted the Mason City Company the use of just the same property which this court held it was the duty of the Union Pacific Company to allow the other companies to use without a contract. We have not included all of the property and rights conferred on some of the companies. Some of these contracts were made before the decision in the *Rock Island* case; several of them since that decision, and since

the acquisition of the property by the present company, notably the amended Milwaukee contract (Record, vol. 1, page 23), the Northwestern contract (Record, vol. 1, page 31). These contracts were made in the light of the decision, and include the use of the property from Council Bluffs to South Omaha, with the passenger station.

It is claimed that the court should not have granted to the Mason City Company "the full, equal and joint use of the main and passing tracks" of the Union Pacific Company from Council Bluffs to a connection with the other railroads at South Omaha. "The full, equal and joint use" means the right jointly with the Union Pacific and other companies to run the trains, engines and cars of the Mason City Company over these tracks, and to use the depot and its tracks. This was held, in the *Rock Island* case, not to be a lease, but only a "running arrangement" or "terminal contract," whereby the possession was not taken from the Union Pacific Company.

Therefore, this language gives the Mason City Company no more than this court held it was the duty of the Union Pacific Company to give to the Rock Island Company.

As to the "main and passing tracks," anyone at all familiar with railroad operations knows that in a big terminal used by many companies, the passing tracks are necessary for each company to use. And, of course, the more companies using the tracks and the more trains operated, the more necessary becomes the use of the passing tracks. It would not have been full justice to have limited the Mason City Company to the use of but one track, and it would have injured the Union Pacific Company; and the counsel knows would have been impracticable.

It is objected that the Mason City Company is authorized to make connections with the other lines at South Omaha. We have seen that all the rail-

ways reaching Omaha from the West connect with the Union Pacific at this point. This was the very object Congress had in mind in the act of 1871, applying the act of 1866. Instead, therefore, of granting to the Mason City Company the use of the Union Pacific tracks to a definite point (*i. e.*, one and one-half miles south of the depot at South Omaha), as was done in the Rock Island contract, the court properly provided that the Mason City Company should enjoy the use of the tracks to a connection with all the railway companies connecting with the Union Pacific tracks to South Omaha (Record, Pleadings and Orders, p. 261).

Again it is urged that the court should not have granted the use of the depot, that it was no part of the bridge, that it is common knowledge that many railroad bridges are used without depots. We cannot conceive what the latter statement has to do with this case. The act of 1871 was passed to enable the Union Pacific Company to construct the bridge, tracks and depots required to perfect the same. To properly understand this act we must consider the circumstances as they then existed. The Pacific Company was without a bridge, depot and several miles of track necessary for it to build its line to the point fixed by the President as its eastern terminus, in Iowa. It had no means with which to construct it. It could make no mortgage prior to that of the United States. It therefore asked the aid of Congress, and the act of 1871 was passed, reciting that for the purposes of making a connection between the eastern and western lines of railroad that then were or thereafter might be constructed, the company was authorized to issue bonds and secure the same by mortgage on the bridge "*and the tracks and depots required to perfect the same.*" The company which received this aid fully understood the object of Congress, and conveyed not only the bridge but

"*the depots at Council Bluffs and Omaha, aforesaid, and the railroad thereover, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with any lines of railroad that are now or shall hereafter be constructed to the Missouri river at Council Bluffs, Iowa, or Omaha, Nebraska.*" The company also asked and received aid from the city of Omaha and county of Douglass. This aid was received in bonds and in cash expended to purchase the ground on which the depot, tracks, bridge and approaches were constructed. The contract contains the same recitals as to connecting the eastern and western lines as the act of Congress; and the sixth clause provides that the use of the bridge and approaches shall be for the same purposes recited in the contract and provided by the act of Congress, and also provides that the object of the clause is to make a virtual and operating connection upon said transfer grounds, between all the railroads desiring such connection which do or may begin or end in, or pass through, Omaha and Council Bluffs, and the trains and business of such roads. And in the deed, the use of the property was limited to the purposes of depot and transfer grounds, right of way, and approaches, for said Missouri River bridge, and subject to the conditions and restrictions contained in the contract. The men who procured this act of Congress made this mortgage and obtained this aid, well knew what was intended, but, as said by Judge Caldwell in 101 Fed. 795:

> "This was the construction placed on the contract by those who made it as long as they were in authority, but in the lapse of years they seemed to have passed out, and 'now there rose up' new men in authority 'which knew not' the meaning of the contract as did those who made it, and hence this lawsuit. But a change in officers cannot be permitted to work a change

in the meaning of the contract long ago settled and agreed upon."

The depot was therefore a part of the property subject to the use provided for by the act of Congress. And the contracts which the company has made, creating it a Union depot for all companies, shows that the company was carrying out its obligations under the act of Congress and to the city of Omaha and county of Douglass.

Referring to these contracts, it will be seen that they are identical in form (Record, vol. 1, pages 23 and 31; Transcript of Pleadings and Orders, page 121, *et seq.*). These contracts necessarily fix the details of operation and the rules and regulations as to running trains, so as to be uniform between all the companies. It was the duty of the court below in entering the decree either to fix the details for the operation of trains or to adopt the system of rules, schedules and details of operation specified by the Union Pacific Company in its contracts with other companies. And it is not a material objection that the court did adopt these provisions, which are presumably the best for all the parties. *Joy v. St. Louis*, 138 U. S. 49 of opinion. In this case it was objected that the details of the manner of use of the right of way could not be specified by a court of equity. The court said:

"The decree of the circuit court is so framed as to execute itself. It finds that the rules and regulations now in force for the running of trains over the right of way and tracks of the Wabash Company, and which are set forth in the record, are reasonable rules and regulations. So long as they are undisturbed, there is no occasion for the action or interposition of the court.

"The fact that the railroads which are to be

allowed, under paragraph 9 of the tripartite agreement, to use the right of way through the park and up to the terminus of the city of St. Louis, are not named in that paragraph, is of no importance. *Wolverhampton Railway Co. v. London & Northwestern Ry.*, L. R. 16 Eq. 433; *Express cases*, 117 U. S. 1; *Railway Co. v. Alling*, 99 U. S. 463.

"Railroads are common carriers and owe duties to the public. The rights of the public in respect to these great highways of communication should be fostered by the courts; and it is one of the most useful functions of a court of equity that its methods of procedure are capable of being made such as to accommodate themselves to the development of the interests of the public in the progress of trade and traffic by new methods of intercourse and transportation."

It will be seen, therefore, that the court was fully justified in taking these uniform contracts with all the roads as the basis for the details of operation, both of the tracks and the Union depot. It was also the duty of the court to fix reasonable compensation. The court adopted the scale of compensation paid by the other companies under their 999 year contracts, as a reasonable compensation; and there was no claim made by the Union Pacific Company that it was not just.

We claim, under the Saunders deed and the act of Congress, that we are entitled to the use of the property without discrimination, hindrance, preference or delay. What the Union Pacific Company granted the use of the property to other companies for, not only before but since the decision in the *Rock Island* case and down to as late as 1898, is very good evidence of a reasonable compensation. And the terms and conditions, which of necessity must

be uniform, adopted by the Union Pacific Company for the operation of this property and the Union depot, are proper rules and regulations to be adopted by the court.

Now it is not true that the Mason City Company has obtained all the rights granted to the other companies. Turning to the Milwaukee contract (Record, vol. 1, page 23), it will be seen that the Union Pacific Company granted it grounds, conveniently located, in South Omaha, on which to construct and maintain, and exclusively use, tracks aggregating three thousand feet in length, for the storage of cars and other purposes, for the term of 999 years. The Mason City Company obtains no such right, although it pays the same compensation as the Milwaukee and other companies.

In lieu of that, the Mason City Company has purchased extensive property near Twentieth street, some of it south of Twentieth street and much of it east of Twentieth street, and has constructed substantial freight terminals, freight houses and elevators, for the accommodation of its freight business, expending therefor more than a half a million dollars.

Again, under section three of the same contract, the Union Pacific Company agrees to receive, deliver and store local freight, for reasonable compensation. This same provision is in all the contracts with the other companies. The Mason City Company has no such right, and the Union Pacific Company not only does not furnish these facilities but it never has, and has refused to. Neither is it true that the Mason City Company enjoys the use of the Union Pacific tracks to industries.

But great stress is laid on the fact that the Mason City Company has a right to connect its tracks in Omaha with the Union Pacific tracks. What use would be the main and passing tracks in Omaha if

it had not a right to connect its freight terminals and freight-houses with those tracks? The whole argument is technical and without merit. Any claim that the Mason City Company will be enabled to make and enforce demands upon the Union Pacific Company which other railroad companies, under their contracts, could not do, is entirely without merit. The Mason City Company and the Chicago Great Western Railway Company (the parent company) have been running their trains, freight and passenger, into Omaha since the entry of this decree in August, 1903, enjoying the same rights as the other companies, to the particular property decreed, without inconvenience, annoyance or injury to the Union Pacific Company, and has been monthly paying for the use thereof.

## IV.

**Every question which is urged in this court to show that the act of 1866 did not apply to the use of the property in question was urged in the Rock Island case.**

Brief in Rock Island case, 168 U. S., 564.

In our main brief we called the court's attention to the fact that every argument advanced by the counsel in this case to show that the act of 1866 did not apply to the bridge and tracks in question, was urged in the Rock Island case. In our argument in the court of appeals we urged that the opinion of this court upon the applicability of the act of 1866 to the property in question was argued by the counsel on both sides in the Rock Island case, and carefully considered by the court. That statement we have reiterated in our brief in this court (page 61). It was stated by the counsel in the court below that this branch of the matter was touched on but little by both court and attorneys. It was further specifically stated as follows:

"On reading statement that the matters provided for in the second and third sections of the act of 1866 were otherwise fully covered in the Pacific Railroad acts, we carefully examined the briefs submitted to the court in that case to find if the points we urged here were presented to the court in connection with the construction of the act of 1871, and we find that they were not urged or considered by the court."

This statement is reiterated by the counsel in this court (page 33 and page 35, Brief). Although we have referred this court to the briefs of counsel filed in the circuit court of appeals and in the Supreme Court of the United States in the *Rock Island* case, yet as the briefs in the circuit court of appeals in that case are probably not within the convenient reach of the court, and as counsel has reiterated this statement with such confidence, we print herewith as an appendix excerpts from the briefs of counsel in the Rock Island case, and leave the court to judge whether or not the distinguished counsel in that case fully and completely argued every question presented on this branch of the cause. Furthermore, the Union Pacific Railroad Company in the Rock Island case especially pleaded that the act of 1871 conferred no power to enter into the contract involved in that suit. The clause of the answer is as follows (C. R. I. & Pac. Ry. *v.* U. P. Ry. Co., Record, vol. 1, page 69):

"Defendant further answering, says that this is a cause arising under the Constitution and laws of the United States, and especially of the said acts of Congress of July 1, 1862, July 2, 1864, and February 24, 1871, and defendant says that its defense herein arises under the Constitution and laws of the United States, and especially under the provisions of the said acts of Congress last hereinbefore referred to. It represents to

the court, that under the true construction, intent and meaning of said acts no power is conferred upon this defendant to enter into any such supposed contract as the one attached to the complaint, and it says that said acts deny to this defendant any right, power or authority to transfer, lease or set over unto any other railroad, corporation, association or person, any of the railway lines, terminal facilities, properties, franchises, privileges or rights of this defendant, and the alleged execution of the said supposed contract by the officers of this defendant was in direct violation of the requirements of the said several acts of Congress; and defendant further shows and represents to the court that the complainant herein insists that this defendant had and has the right under the true construction, intent and meaning of said several acts of Congress to enter into the said contract, and to dispose of, lease and set over its said properties described in said supposed contract, in the manner and form therein provided; wherefore, defendant says that there is a contention between the parties as to the true construction, intent and meaning of the said several acts of Congress, and the determination of this cause depends upon which of the two said constructions contended for the said court shall adopt as the true one."

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JAMES M. WOOLWORTH,
WILLIAM D. McHUGH,
CORDENIO A. SEVERANCE,
*Solicitors and Counsellors for Complainant and Appellee.*

# APPENDIX TO REPLY BRIEF.

**Extracts from Brief for Appellee (Pages 27, 28, and 118 to 127, inclusive), in the United States Circuit Court of Appeals for the Eighth Judicial Circuit, in the Case of Union Pacific Railway Company et al., Appellants, v. Chicago Rock Island and Pacific Railway Company, Appellee.**

## VI.

### Contract Between the Union Pacific Railway Company and the County of Douglas and the City of Omaha in the State of Nebraska.

Saunders' deed stipulation (Record, pp. 140-144).

In 1872 the Union Pacific Railway Company entered into a contract with the county of Douglas and the city of Omaha in the State of Nebraska, the declared purpose of which was "to arrange for the "more perfect connection of any railroads that are "or shall be constructed to the Missouri river at or "near Council Bluffs, Iowa, and Omaha, Nebraska." By this contract the railway company agreed to "construct, complete, and maintain a railroad bridge "over the Missouri river at the said city of Omaha;" and that under proper rates for the valuation "to be "prescribed by the said railroad company," the trains, cars, and engines of all other railroads now or hereafter running into "Council Bluffs and Omaha, "shall have unobstructed access and transit to and "over said bridge and its approaches, and such roads "shall have the right to take or cause to be taken

"their trains, cars, and engines with their freight "and passengers over and across said bridge and the "approaches at reasonable compensation, without "discrimination, hindrance, preference or delay, pro- "vided, however, that the Union Pacific Railway "Company shall in all cases have the option of sub- "stituting its own engines for those of such other "roads in the operating of its said bridge, receiving "reasonable compensation therefor." It was de- clared that the object of this clause was "to make a "virtual and operating connection" upon certain grounds described, in the city of Omaha, "between "all the railroads desiring such connection, which "do or may begin, end or pass through Omaha or "Council Bluffs, and the trains or business of said "roads."

In consideration of these covenants the county of Douglas delivered to said company its bonds having a par value of $250,000 and the said city of Omaha conveyed to it a large body of land, "known as the "depot grounds and the right of way." The deed by which the land was conveyed limited the "use of all "said premises to the legitimate purposes of depot "and transfer grounds, for right of way and ap- "proaches to said Missouri river bridge, subject to "the conditions and restrictions contained in the "contract above recited."

It is stipulated that said deed was "executed and "delivered on the 27th day of January, 1872; and "that the said grantee (the Union Pacific Railroad "Company), and its successor, holds the land and "premises under and by virtue thereof."

## THIRD POINT.

(Pp. 118 to 124.)

### The Power to Make these Contracts may be Derived Directly from the Language, Policy and Purpose of the Charter Incorporating the Union Pacific Railroad Company, which has since been Consolidated with Other Companies into the Union Pacific Railway Company, and is Ample, on General Principles of Law.

The act of Congress of July 1, 1862, and the act of July 2, 1864, amendatory thereof, originally provided for a railway extending from the 100th meridian to the eastern boundary of California, to be built by a Federal corporation known as the Union Pacific Railroad Company.

12 Stat. at Large' pp. 489, 13 id., p. 356.

The original act, and its amendments, provided for an extension of this line from the eastern boundary of California to the Pacific coast, and also for an eastern extension to Leavenworth, Sioux City and Omaha, or Council Bluffs. The latter known as the Iowa branch, and to be built by the Federal corporation.

This system of railways was provided to be built, first, by a Federal corporation; second, by a California corporation; third, by a Kansas corporation; fourth, by an Iowa, Minnesota, or Dakota corporation, that is to say, corporations organized under the laws of the several States named.

The Supreme Court of the United States has left no doubt of its construction of this scheme of railways, by its language in Union Pacific Railroad Company *v.* Hall:

The Union Pacific Railroad Company v. Hall, 91 U. S. Rep., 345.

> "By the first section of the act of 1862 the Union Pacific Railroad Company was authorized to construct, maintain and enjoy a continuous railroad and telegraph, with the appurte-

nances, from a point on the one hundredth meridian of longitude west from Greenwich to the western boundary of the Territory of Nevada. There it was intended to meet and connect with the line of the Central Pacific Railroad Company of California (sect. 8), thus forming a continuous line to the Pacific ocean. This was the main line. But the same act made provision also for several eastern connections. The ninth section authorized the Leavenworth, Pawnee & Western Railroad Company of Kansas (now the Kansas Pacific) to construct a railroad from the Missouri river, at the mouth of the Kansas river (on the south side thereof, so as to connect with the Pacific railroad of Missouri), to the point of western departure of the Union Pacific on the one-hundredth meridian. Thus provision was made for an eastern connection by an unbroken line of road to St. Louis on the Mississippi. This was not all. By the fourteenth section of the act the Union Pacific was authorized and required 'to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa, to be fixed by the President of the United States, * * * so as to form a connection with the lines of the said company at some point on the one-hundredth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of Iowa.' Thus provisions were made for the Iowa eastern branch of the main line. It was doubtless intended to render possible a connection with any railroad that might thereafter be constructed from the western boundary of Iowa eastward. None was then completed, but a railroad was in progress of construction through the State, from its eastern border to the Missouri river.

"The fourteenth section also made provision for another eastern connection. It enacted that whenever there should be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific (Union Pacific) Railroad Company should be authorized and required to construct a railroad and telegraph from said Sioux City, so as to connect with the Iowa branch or with the main line, at a point not farther west than the one-hundredth meridian of longitude.

"The scheme of the act of Congress, then, is very apparent. It was to secure the connection of the main line by at least three branches, with the Missouri and Iowa railroads, and with a railroad running eastwardly from Sioux City in Iowa, either through that State or through Minnesota."

Here was a system in which Federal and State corporations were used indifferently to effect the purpose of Congress, and the whole tenor and spirit of the act shows that it was the intention of Congress that the system thus outlined should work in harmony and be operated by continuous trains. In other words, the very groundwork and constitution of these acts involved the harmonious and continuous and non-discriminating operation of these lines as a unit.

Accordingly section 15 of the act of July 2, 1864, provided specifically, as if to remove all doubt or question as to the purpose of the scheme, as follows:

"SEC. 15. *And be it further enacted*, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the Government are con-

13 U. S. Stat. at Large, p. 362.

cerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others."

This legislation was strengthened and enforced by an amendment to the appropriation act, approved March 3, 1873, giving the circuit court of the United States jurisdiction to hear and determine cases of mandamus to compel the Union Pacific Railroad Company to operate its road as required by law. It is a matter of history that this provision was inserted for the purpose of reaching a refusal on the part of the Union Pacific Railroad Company to interchange business, trains or cars, between the Kansas Pacific, Sioux City and Pacific, and the Central Pacific Railway Company, upon terms demanded, as those companies insisted, by the provisions of the charter of the Union Pacific Company.

18 Stat. at Large, p. 111.

The subsequent act of Congress, approved June 20, 1874, reiterated these obligations, and imposed penalties for the violation thereof, thus showing the purpose and intention of Congress to unify the system.

The effect of all this legislation was to compel the Federal corporation to receive the business of the branch roads, built under State corporations, and to receive its trains and cars upon its own tracks in such manner as to effect a continuous operation of the road built by the Federal corporation and the State corporations.

Union Pacific Railway Company v. Hall, 91 U. S., 366.

The Supreme Court, in the case of Union Pacific Company v. Hall, use this further language:

"From it (that is to say the Union Pacific charter) may reasonably be inferred that the purpose of Congress was to provide for connections of the branches of the main line of the Union Pacific road with railroads running through the States on the east of the Territory, and to provide for those connections within those States, at points at or near their western boundaries. Thus, the northern branch was required to be constructed from Sioux City westward toward the main line; and the southern branch was authorized to build their railroad from the south side of the Kansas river, at its mouth, so as to connect with the Pacific railroad, of Missouri."

Not only a continuous operation of the Federal and branch roads, provided for in the acts of Congress was contemplated, but, according to the Supreme Court, connections with eastern roads, reaching the Missouri river from eastern points, were also contemplated.

With what reason, therefore, can it be said that while it was the purpose of Congress to compel the Federal corporation to receive upon its tracks the trains and cars of State corporations, included in the system of lines from the Missouri river to the Pacific ocean, it was at the same time its intention to deny the power to the Federal corporation of making a terminal or trackage contract with connecting corporations reaching the Missouri river from the East, organized under State laws? Such contracts seem to be in strict accordance with the express language of the Union Pacific charter, and in complete accordance with its policy, as appears from its face, and as interpreted by the Supreme Court.

It is wholly a different question from that which would grow out of a complete abdication, on the

part of the Union Pacific, of its franchises and property and powers as a Federal corporation, by the surrender of the control, management and use of its property to any other corporation. The one would amount to the abandonment of its functions as a corporation for the purpose for which it was organized; the other is in the line of promoting the consummation of the purposes of its charter, the increase and development of the business, and the accommodation of traffic and travel by amicable contracts with connecting eastern roads at the east bank of the Missouri river, in strict accordance with the terms and policy of the act. And, until it can be shown by proof, by overwhelming testimony, that the effect of the pending contracts is to disable the Union Pacific from doing its own business and carrying out the purposes of its charter certainly it cannot be claimed that these contracts are beyond its corporate power.

We think it has been abundantly shown, by proof, that these contracts will facilitate and enhance the purposes of the charter rather than obstruct and destroy them.

This construction is also in harmony with other legislation looking to the removal of obstacles and restrictions upon interstate commerce, and substituting in their place the greatest facilities for continuous transportation and the connection of trunk, continental, or interstate lines in the transaction of the public business.

14 Stat. at Large, p. 66.

The act of Congress, approved June 15, 1866, entitled, "An act to facilitate commerce, postal and military communication among the several States," has a direct and decided bearing on this question. The first section provides as follows:

> "That every railroad company in the United States whose road is operated by steam, its suc-

cessors and assigns, be and is hereby authorized to carry upon and over its road, boats, bridges and ferries, all passengers, troops, Government supplies, mails, freights, and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination."

Directly and closely connected with this provision is an act entitled, "An act to authorize the construc- "tion of certain bridges, and to establish them as "post roads," approved July 25, 1866, at the same session of Congress, and a few days after the passage of the last mentioned act. 14 Stat. at Large 244.

The first section of this act of Congress provides for the construction of a bridge at Quincy, Illinois. Other sections provide for the erection of bridges at other points. And the first section contains the following language: "And that when constructed "all trains of all roads terminating at said river, at "or opposite said point, shall be allowed to cross "said bridge for reasonable compensation, to be "made to the owners of said bridge, under the limita- "tions and conditions hereinafter provided."

These provisions, applied in this case to the Quincy bridge, also to one at Burlington, Keokuk and Dubuque, Iowa, and Kansas City, Missouri—are, by act approved February 24, 1871, applied to the Union Pacific Railroad Company's Missouri river bridge between Council Bluffs and Omaha, which bridge is included in the terms of this contract.

Here, then, so far as a portion of the line, covered by the contract, is concerned, we have not only a grant of power to other roads to cross it, but an unequivocal command predicated upon the general policy of Congress, which is treaceable in all these

acts, to permit and allow, for reasonable compensation, any road, reaching such bridge, from either end, to cross and use the same.

The power to cross is useless, worthless and barren, unless the power to connect with roads connected with said bridge, accompanies the power to cross.

It cannot be presumed that Congress intended by this grant, to confer an unfruitful or worthless power. It evidently, on the contrary, intended in granting the power to cross, to grant, at the same time, the power to make such connections as would render such crossing available, and valuable to the company accepting such grant.

The act of June 15, 1866, "To facilitate commerce," expressly grants the power to connect with the roads of other States, "so far as to form continuous lines "for the transportation of the same to the place of "destination."

Looking at these two acts (the one approved June 15, 1866, and the other, July 25, 1866), can it be doubted that both were in the mind of Congress at the passage of the latter, and that the power to cross and the power to connect were intended to go hand in hand?

In the enactment of the act of February 24, 1871, authorizing the Union Pacific to build a bridge across the Missouri river, between Council Bluffs and Omaha, and providing "that for the use and protec- "tion of said bridge and property, the Union Pacific "Company shall be empowered, governed and lim- "ited by the provisions of the act of July 25, 1866," can it be doubted that the intention was to confer upon the Union Pacific Company the power not only to permit the trains of other roads upon its bridge and connecting tracts, but to authorize it in almost express language, and, certainly, by necessary implication, to make suitable contracts for such crossing and for such connection?

**Extract from Brief for Appellee (pages 55 to 69, inclusive), in the Supreme Court of the United States, in the case of Union Pacific Railway Company et al., Appellants, v. Chicago, Rock Island and Pacific Railway Company et al., Appellees.**

II.

The provision of the Pacific Railroad acts relating to the bridge over the Missouri river, its construction and operation, impose upon the Union Pacific Company the duty of permitting the Rock Island and any other company to run their engines, cars and trains over the bridge and the tracks between Council Bluffs and South Omaha.

1. The original charter of 1862 impliedly authorized the company to bridge the river at Council Bluffs and Omaha, for it required the construction of the road from its east bank.

Union Pacific R. R. Co. *v.* Hall, 91 U. S., 343.

The amendatory act of 1864 granted this power expressly. Section 9 contains this clause: 'Authority is hereby given said corporation to construct bridges over said Missouri river,' etc.

Railroad Co. *v.* Hall, *supra*.

Union Pacific R. R. Co. *v.* U. S., 117 U. S., 355.

All that these acts contemplated was a bridge for the company's use as a part of its road. No provision was made for other roads or for other business. Nor were any special means provided for the construction of this bridge. Doubtless it was supposed that between the proceeds of its first mortgage, the subsidy of Government bonds which these acts granted, and the stock of the company, it possessed

sufficient means to defray the expense of a structure such as it should require for its own use.

In 1871 the conditions had greatly changed; several roads had been built from the East to the initial point of the Union Pacific at Council Bluffs, and others were building. So too, roads were in process of construction in Nebraska with Omaha as their termini. A bridge sufficient for one company was not likely to answer for all; under these conditions the Omaha bridge act was passed, (16 Stat., 430), the provisions of which, shortly stated, are as follows:

(*a.*) The company is authorized to issue such bonds not exceeding $2,500,000, and to secure the same by mortgage on the bridge and approaches and appurtenances, as may be needful to construct and maintain its bridge, and the tracks and depots required to perfect the same.

(*b.*) The reason for granting this authority is stated to be "for the more perfect connection of any railroads that are or shall be constructed to the Missouri river at or near Council Bluffs, Iowa, and Omaha, Nebraska."

(*c.*) The bridge was to "be so constructed as to provide for ordinary vehicles and travel;" and the company was authorized "to levy and collect tolls for the use of the same."

(*d.*) "For the use and protection of said bridge and property, the Union Pacific Railroad Company shall be empowered, governed and limited by the provisions of the act entitled 'An act to authorize the construction of certain bridges and to establish them as post-roads,' approved July twenty-sixth, eighteen hundred and sixty-six, so far as the same is applicable thereto."

(*e.*) The act further provides that it should not operate to change the initial point of the road, reserved to Congress power to regulate the bridge and

tolls for freight, passengers and local travel and defined the width of the spans, if it were built as a draw-bridge.

This act contemplated a bridge to be used not by the Union Pacific only, but by all roads both in Iowa and Nebraska which ran to it; and not for railroad purposes only, but for ordinary travel as well. Several considerations support this contention.

(1.) That a structure of vastly greater size than one sufficient for the uses of the Union Pacific alone was here provided for, appears from the large sum specially authorized to be raised for its construction and to be secured by a mortgage upon it. While the resources of the company which the acts of '62 and '64 provided were adequate to the construction of such a bridge as they contemplated, special powers seemed necessary in order to raise the money to build such an one as was needed under the new conditions of 1871.

(2.) But this was not left to inference; it was distinctly stated that the authority to issue bonds and secure them by mortgage on the bridge was granted "for the more perfect connection of any railroads that are or shall be constructed to the Missouri river at or near Council Bluffs, Iowa, or Omaha, Nebraska." The perfect connection of Iowa and Nebraska roads could not be effected by means of this bridge unless their trains hauled by their engines ran over it.

(3.) As if to put the matter beyond all doubt, the bridge act of 1866 was incorporated in that of 1871, so as to become a part of it as much as if its pertinent provisions had been set out therein in full. That act in its first section authorized certain persons to "build a bridge across the Mississippi river at Quincy, Illinois, and to lay on and over said bridge railway tracks for the more perfect connection

of any railroads that are or shall be constructed to the said river, at or opposite said point, and that when constructed, all trains of all railroads terminating at said river at or opposite said point, shall be allowed to cross said bridge for reasonable compensation" (14 Stat., 244).

If that clause, modified so as to refer to this bridge had been inserted in the act of 1871, there would be no room to doubt the right of the Rock Island to run its own engines as well as its cars and trains over the bridge. It would in so many words run like this: "For the more perfect connection of any railroads that are or shall be constructed to or near Council Bluffs and Omaha, all trains of such roads shall be allowed to cross said bridge for reasonable compensation."

The consistency of the two acts—that of '66 and that of '71—is worth noticing: the object of both is the same; namely, the more perfect connection of roads running to the bridge on either side of the river; and this common object stated in both shows the diligence of Congress, when enacting the act of '71 to secure this object by incorporating therein by way of reference the provision of the former that all trains of all roads should be allowed to cross the bridge.

A strong light is reflected upon the act of 1871 by a long series of acts of Congress authorizing the construction of bridges across navigable streams dividing two States.

On the 21st of February, 1868, an act was passed authorizing the Southern Minnesota Railroad Company to build across the Mississippi river a bridge subject to the provisions of the act of 1866. Its language is, that the railroad company "is hereby authorized to construct and operate a railroad bridge, * * * subject to all the terms, conditions, restrictions and requirements, and entitled to all the priv-

ileges named in an act approved July 25, 1866, entitled An act to authorize the construction of certain bridges and to establish them as post-roads" (15 Stat., 37).

On the 20th of July of the same year, the Kansas & Missouri River Bridge Company was authorized to build a bridge across the Missouri upon or near the military reservation of Fort Leavenworth, and provided "that, when constructed, all roads terminating at the Missouri river at or near the location of said bridge, shall be allowed to cross said bridge for a reasonable compensation to be paid to the owners thereof." And by the same act the St. Joseph & Kansas City Railroad Company was authorized to build a bridge over the same river at St. Joseph, with all the rights and privileges and subject to all the restrictions, limitations, and conditions contained in the act relating to the Kansas & Missouri Bridge Company" (16 Stat., 121).

On the same day another act was passed authorizing the St. Louis & Illinois Bridge Company to construct a bridge in conformity with the act of 1866 (16 Stat., 123).

On the 27th of July, another act was passed authorizing the construction of a bridge across the Potomac from Georgetown with power to operate a railroad across the same and providing that all railroad companies shall have the same rights over said bridge (16 Stat., 231).

On the 30th of June, 1870, an act was passed authorizing the construction of a bridge across the Niagara with this provision: "And all railroad companies desiring to use the said bridge shall have and be entitled to equal rights and privileges in the passage of the same and of the use of the machinery and fixtures thereof, and of all of the approaches thereto" (16 Stat., 173).

On the 1st of July of that year, the Citizens' Bridge

Company was authorized to build a bridge across the Arkansas at Little Rock with this provision: "All trains of all roads terminating at the Arkansas river at or near the location of said bridge, shall be allowed to cross the bridge for a reasonable compensation to be paid to the owners thereof" (16 Stat., 185).

On the 3rd of March, 1871, a bridge was authorized over the Mississippi at the city of Louisiana, in which it was provided that all railway companies desiring to use the said bridge, shall have and be entitled to equal rights and privileges in the passage of the same (16 Stat., 474).

On the 3d of March of the same year, a bridge across the Wabash was authorized in which it was provided, "that all railway companies desiring to use said bridge shall have and be entitled to equal rights and privileges in the passage of the same" (16 Stat., 599).

It would be tedious to go through all the acts authorizing the construction of bridges, to show that they contained the same provisions in substance as those of the act of 1866. More than eighty such statutes are found in the volumes of the Statutes at Large, beginning with the seventeenth and coming down to the present time, and in all of them substantially the same provision is found. They reveal a settled policy that all structures of this character should allow all connecting roads to cross them with their cars, trains and engines.

It is insisted that the reference in the act of 1871 is only to the second and third sections of that of 1866. This limitation of the terms of reference is inadmissible; for the matter of those sections is sufficiently covered by the other acts. Section 2 of the act of 1866 relates to the character of the structure as a bridge with a draw or one with a continuous span. The act of '64 also defines the character of the Union Pacific bridge. Its ninth section pro-

vides that the bridge "shall be constructed with suitable and proper draws for the passage of steamboats, and shall be built, kept and maintained, at the expense of said company, in such manner as not to impair the usefulness of said river for navigation to any greater extent than such structures of the most approved character necessarily do." In this respect the two acts are substantially the same. But whatever is left at large in the act of '64 is completely covered by the last clause of the act of '71 which defines the width of the spans, if the bridge is a drawbridge; they are to be 250 feet in length in the clear on each side of the central or pivot pier of the draw. The matter of the second section of the act of '66 being covered by the provisions of the acts of '64 and '71, it was useless to incorporate that section in the last act.

And the same is true of the third section of the act of '66. It provides:

(*a.*) That the bridge shall be a lawful structure;

(*b.*) That it shall be recognized as a post-route; and

(*c.*) That the United States shall not be charged higher rates for transportation over it than for transportation over roads leading to it.

The act of '64 by authorizing the construction of the Union Pacific bridge, made it a lawful structure; it was not necessary to say so in so many words. Again, the bridge was a part of the Union Pacific railroad, and as such was a post-route. One of the principal objects of its incorporation was to carry the mails. Still further, the rates for transportation over the bridge were fixed by the act of 1862.

Union Pacific R. R. Co. *v.* United States, 117 U. S., 355.

The three matters provided for in the third section being thus fully covered in the Pacific Railroad

acts there was no need of incorporating it in the act of '71. It is not reasonable construction of that act to restrict its reference to sections two and three of the act of '66 when the matters of those sections are adequately covered by other provisions. To do so is to render the terms of reference of no effect. Section one of the act of '66 is the only clause of that act not covered by the acts of '64 and '71, and we are to read into the act of 1871 this clause of that of 1866: "All trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation."

It is said on the other side that even if it were competent for the Union Pacific to grant to the Rock Island the right to run its trains with its own engines over the bridge, its powers did not extend so far as to grant the same rights over the tracks. The tracks east of the bridge are upon the approach to the structure proper. This is distinctly stated by Mr. Day, an engineer who went over all of the ground and took careful measurements. At page 586 he says that "from the point where the track of the two companies connect to the east end of the bridge there are 109 stations of one hundred feet each; that is, 10,900 feet" and that at the point of connection which he calls "Station 0" there is practically no bank; but that at that point the embankment begins and attains a height of 20 feet at Station 77, from which to the bridge it is very high. This shows that all the way from point of connection to the bridge is an approach. An approach to a bridge is properly a part of it; accordingly, all of the road on the east of the bridge may be dismissed without further remark.

The length of the approach at the west end of the bridge is not shown; and therefore the tracks on that side cannot be disposed of in the same summary way. But we have assistance in the act of 1871, which provides that for the more perfect connection

of the roads east of the river with those west of it, to raise money to construct and maintain the bridge and the tracks and depots, to perfect the same, the company may issue bonds and "secure the same by a mortgage on the bridge and approaches and appurtenances." This places the tracks and depot which perfect the bridge on the same footing as that structure. The map in the pocket of the record shows that the depot is more than a half mile from the west end of the bridge. So far, the power of the Union Pacific to grant to the Rock Island the use of the track is covered by the bridge act. They are easily brought within the general terms 'bridge' as a part of that structure.

From the depot to the point in South Omaha where the tracks of the two companies connect is about four miles; and here, if anywhere, is the difficulty in tracing the power of the Union Pacific so far as it is derived from the bridge act. It is insisted that this distance is a chasm over which we cannot pass; that our trains can run from our road in Council Bluffs over the bridge and its approaches as far as the depot and within sight of our track in Nebraska, but can go no further. It is rather distressing if the powers of the Union Pacific fail us just here. We do not think they do. We think this distance of four miles is reasonably within the terms of the act of 1871, which provide for a connection of roads running near to Omaha. This word 'near' is indefinite, and will, under the circumstances of this case, be satisfied by stretching it over this comparatively short distance.

And this appears to be altogether right when the policy of Congress clearly exhibited in its legislation is considered. Just as in The Union Pacific Railroad Company *v.* Hall, 91 U. S., 343, Mr. Justice Strong deduced from the fact that the Pacific acts required the company to connect with roads in Iowa

the conclusion that the road should be constructed into Iowa so as to permit the connection, so here we may infer from the object of the act of 1871 as stated therein, that the word "near" Omaha should be taken in a liberal sense in furtherance of the objects of Congress.

And this construction is supported by a policy of great interest to assist and assure interstate commerce, which may be discovered in several other acts providing for railroad connections at State boundaries.

The original charter proposed a scheme of great scope, which is described by Mr. Justice Strong in The Union Pacific *v.* Hall, *supra*. Time will not allow more than the most general statement here. There were to be a main trunk, beginning on the 100th meridian, which is about two hundred miles west of Omaha, running west to the Pacific; and three or more branches running from the Missouri river, converging at the eastern initial point of the trunk; one from the mouth of the Kansas; one from Omaha; and one from Sioux City.

Section 12 of the original charter provided that the trunk and all the branches "shall be operated and used for all purposes of communication, travel and transportation, so far as the public and Government are concerned, as one connected continuous line." In section 15 of the amendatory act of 1864 the above recited provision is expanded; and all of the companies were required to operate their several and respective roads together, as one connected continuous line, each affording to the other equal facilities, without discrimination for or against any member of the vast system.

It was intended that each of these branches should connect with the eastern roads. In the case cited it is said "thus provisions were made for the Iowa eastern branch of the main line. It was doubtless in-

tended to render possible a connection with any railroad which might thereafter be constructed from the western boundary of Iowa eastward;" that is to say, the Rock Island and the St. Paul. Again, it is said, "the scheme then of the act of Congress is very apparent. It was to secure the connection of the main line by at least three branches with the Missouri and Iowa railroads." And again, "from it (that is to say the Union Pacific charter) it may reasonably be inferred that the purpose of Congress was to provide for connections of the branches of the main line of the Union Pacific road with railroads running through the States on the east of the Territory and to provide for those connections within those States at points at or near their western boundaries."

This large, wise and well-digested scheme by which eastern roads were brought into connection with the Pacific system was the initiative of the great policy we have mentioned. This act was followed by the "Act to facilitate commercial, postal and military communication among the several States" approved June 15, 1866 (14 Stat., 66), which has been embodied in the Revised Statutes (sec. 5258, R. S.). It provides that, "Every railroad company in the United States, whose road is operated by steam, its successors and assigns, be and is hereby authorized to carry upon and over its road boats, bridges and ferries, all passengers, troops, Government supplies, mails, freights and property on their way from one State to another State, and to receive compensation therefor, and to connect with roads of other States, so as to form continuous lines for the transportation of the same to the place of destination." This provision authorizes different companies to join their tracks and thereby form continuous lines of transportation. This act has been liberally construed (Railroad Co. *v.* Richmond, 19 Wall., 584; Hardy *v.* The Atchison

Railroad Co., 5 Pac. R., 6; Kentucky, etc., Co. *v.* Louisville Co., 37 Fed. R., 567, 629, 633).

On the 24th of July, 1866 (14 Stat., 221), the telegraph act was passed, the terms of which are familiar to the court. Then followed the bridge act of 1866, the Union Pacific bridge act of 1871, the more than eighty bridge acts and the acts incorporating the other transcontinental railroad companies, every one of which, without regard to State boundaries or rivers, contained provisions for railroad connections and continuous lines of transportation. They form a great and interesting body of legislation which is pervaded by a public policy, to advance which a breadth of construction of particular words and clauses is by the best principles required.

In hostility to this great policy, a narrow construction of the act of 1871 is not tolerable; such construction would throw it out of harmony with other legislation and defeat its manifest and beneficent purpose.

**Extract from Brief for Appellants (pages 43 to 55, inclusive), in the United States Circuit Court of Appeals for the Eighth Judicial Circuit, in the Case of Union Pacific Railway Company et al., Appellants, vs. Chicago, Rock Island and Pacific Railway Company, Appellee.**

NO AUTHORITY TO LEASE OMAHA BRIDGE.

But the complainant may insist that though the Union Pacific had no authority to lease its railroad generally, it did have authority to lease that part of it which is known as its Omaha bridge; and to show such authority will cite the Omaha Bridge act of February 24, 1871, 16 Stat., 430. But unless the

Omaha Bridge act of 1871 in some way releases the Union Pacific from the obligations imposed by the prior acts of July 1, 1862, and July 2, 1864, to operate the Omaha bridge as a part of its railroad, the Omaha bridge cannot be operated in any different manner from the rest of its line of railroad. We shall see that the act of 1871 does not attempt to do so; but, on the contrary, the act expressly provides that nothing in the act shall be construed as releasing the Union Pacific from its obligations as established by existing laws.

Further, even if it were true that a lease of the bridge, or the contract of April 30 and May 1, 1890, so far as the bridge is concerned, were authorized by the act of 1871, yet neither that act nor any other act authorizes a lease or contract for the use by any other company of any other part of the Union Pacific railroad. The contracts purport to grant a joint use not merely of the Omaha bridge, but of the railroad, about eight miles in length, of the Union Pacific between Council Bluffs, South Omaha, and Omaha (contract, art. 1, sec. 1, Record, p. 16); and the rental is stated as a consideration for the entire ten miles of railroad. Hence, the contract of May 1, 1890, is void as to that part of the Union Pacific railroad which is not the Omaha bridge; and as the contract is thus void in part, and the void part and the consideration therefor are not capable of separation from the rest, the contract is void throughout.

We proceed, however, to consider the Omaha Bridge act of February 24, 1871, and to show that it does not authorize the said contracts purporting to grant to complainants the joint use of the bridge.

Object of Omaha Bridge Act.—Before considering the text of that act, it is well to note the exact condition of the legislation down to the date of the act. The construction of the bridge had not only been already fully authorized and required, as above

shown, but the bridge was then partly constructed. This act was passed, as its title states, in order to enable the company to issue a separate series of bonds secured by a separate mortgage on the bridge instead of allowing the company to issue only its regular mortgage bonds at the same rates per mile as they could be issued upon the ordinary parts of its railroad. The obvious reason for this was that the bridge cost a far larger sum per mile than the ordinary railroad. The Omaha Bridge act is as follows

**"An Act to Authorize the Union Pacific Railroad Company to Issue its Bonds to Construct a Bridge Across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That for the more perfect connection of any railroads that are or shall be constructed to the Missouri river, at or near Council Bluffs, Iowa and Omaha, Nebraska, the Union Pacific Railroad Company be, and it is hereby authorized to issue such bonds, and to secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge over said river, and the tracks and depots required to perfect the same, as now authorized by law of Congress; and said bridge may be so constructed as to provide for the passage of ordinary vehicles and travel; and said company may levy and collect tolls and charges for the use of the same; and for the use and protection of said bridge and property, the Union Pacific Railroad Company shall be empowered, governed and limited by the provisions of the act

entitled, 'An act to authorize the construction of certain bridges and to establish them as post roads' approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto: *And provided*, That nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company, or its successors, from its obligation as established by existing laws; provided, also, that Congress shall at all times have power to regulate said bridge, and the rates for the transportation of freight, and passengers over the same, and the local travel hereinbefore provided for. And the amount of bonds herein authorized shall not exceed two and a half millions of dollars; provided, that if said bridge shall be constructed as a drawbridge, the same shall be constructed with spans of not less than two hundred feet in length in the clear on each side of the central or pivot pier of the draw." Approved February 24, 1871.

OBLIGATION OF UNION PACIFIC ITSELF TO OPERATE ITS WHOLE LINE OF RAILROAD NOT CHANGED BY OMAHA BRIDGE ACT.

Note that this act provides:

"That nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company, or its successors from its obligation as established by existing laws."

The eastern terminus of the Union Pacific railroad had been fixed by Executive orders of President Lin-

coln, dated November 17, 1863, and March 7, 1864, upon the Iowa bank of the Missouri river opposite Omaha, in accordance with sec. 14, act July 1, 1862, 12 Stat., 489, above referred to. (See U. P. R. R. Co. vs. Hall, 91 U. S., 343, 349.) "Its obligation as established by existing laws" as is shown by the above extracts from the acts of July 1, 1862, and July 2, 1864, was itself to use and operate its whole line of railroad, including the Omaha bridge; to give the United States the preference in the use of the same; and to pay a percentage of its net earnings to the United States. Upon a failure so to operate its railroad, its rights, privileges and franchises were to be forfeited to the United States. The Omaha Bridge act provides that the act shall not be construed as releasing the Union Pacific from any of these obligations. There is, therefore, clearly no authority in this Omaha Bridge act for the Union Pacific to make the contract or lease now in question, unless such authority be contained in the provision of the act that:

> "For the use and protection of said bridge and property the Union Pacific Railroad Company shall be empowered, governed and limited by the provisions of the act entitled 'An act to authorize the construction of certain bridges, and to establish them as post roads,' approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto."

In regard to this clause, it is to be noted that it is immediately followed and controlled by the proviso above quoted that nothing in the act shall be construed as changing the eastern terminus of the Union Pacific railroad, nor as releasing the company from any of its obligations as established by existing laws. Whatever there may be in the act of July 25, 1866, above mentioned, is therefore controlled by this pro-

viso. There can be no doubt whatever that under the laws existing at the date of the Omaha Bridge act the "obligation" of the Union Pacific was itself to operate its whole line of railroad, including the Omaha bridge, and that it could not release itself from this obligation by attempting to delegate the operation of its railroad or part of its railroad to any other company or person. The Omaha Bridge act expressly provides that nothing contained in it shall release the Union Pacific from this obligation. This is the clear and positive language of the act, and controls anything that may be found in the act of July 25, 1866. The Omaha Bridge act of 1871, therefore, in connection with the act of July 25, 1866, does not authorize the Union Pacific Company to delegate to any other company the duty and obligation to operate its Omaha bridge. We proceed to consider this act of July 25, 1866, in connection with the Omaha Bridge act, and to show that it does not authorize the Union Pacific Company to lease its Omaha bridge; while, as we have already pointed out, *supra*, even if it did authorize a lease of the bridge, neither it nor any other act authorizes the Union Pacific to lease the remaining six or seven miles of the ten miles of its railroad which the contract purports to lease; and, therefore, on that ground the contract is void.

The part of the act of July 25, 1866, which complainant may urge as giving the Union Pacific a right to lease the Omaha bridge, as provided in the alleged contract, is as follows (14 Stat., 244):

> "That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose to build a bridge across the Mississippi river at Quincy, Illinois, and to lay on and over said bridge railway tracks for the more perfect connection of any railroads that are or shall be

constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge, under the limitations and conditions hereinafter provided. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said river, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches."

Note that this is purely a *bridge* act. The first section of the act above quoted authorizes the building of a certain bridge across the Mississippi river at Quincy, Illinois. Under this act a bridge could be built by a bridge company, or by an individual or individuals, provided they had the requisite State authority. The object of this section clearly is to authorize the erection of a bridge by any person or corporation at the point named and to provide for the use of this particular bridge. The Omaha Bridge act of 1871, which provides that "for the use and protection of said bridge and property the Union Pacific Railroad Company shall be empowered, governed and limited by the provisions of the act of July 25, 1866, so far as the same is applicable thereto," has no reference to these special provisions of the act of July 25, 1866, which apply only to "said bridge" across the Mississippi river at Quincy, Illinois. The only object of the reference in the Omaha Bridge act to the act of July 25, 1866, as this court has expressly decided, was to make the general provisions of the act of July 25, 1866, apply to the Omaha bridge so far as these general provisions were not inconsistent with the provisions of the acts of

July 1, 1862, and July 2, 1864, and February 24, 1871. The Omaha Bridge act did not intend to make any of the special provisions of the act of July 25, 1866, apply to the Omaha bridge, nor, as the Supreme Court of the United States has expressly decided, did it intend to make even the general provisions of that act apply in any case where they were inconsistent with the provisions of the acts of 1862, 1864 and 1871, above referred to, nor where these acts made sufficient and ample provisions with reference to the Omaha bridge. The only provisions of the act of July 25, 1866, which have any application to the Omaha bridge are sections two and three. Section 2 provides in regard to the character of the structure, the spans of its draw-bridges, opening of draw-bridges, etc. Section 3 provides that the bridge shall be a lawful structure and known as a post-route. Those provisions, which are general in their character, were designed to accomplish two purposes: 1st, to regulate the character and use or operation of the bridges mentioned, as bridges across navigable rivers are generally used and operated, so as not to interfere with navigation; and 2nd, subject to these limitations and provisions, to authorize the bridge and make it a lawful structure where otherwise it might be a nuisance; and 3rd, to make it a post-route with all the protection which the laws of the United States give to such post-route as an agency of the Government. These provisions were intended to apply to the bridges mentioned by whatever person or company they were owned and operated. They apply to the bridges designated in the act of July 25, 1866; and so far as no special provision had been made in the acts of 1862, 1864 and 1871, above referred to, and so far as they were not inconsistent with the provisions of those acts they were intended to apply to the Omaha bridge. This was the purpose and the only purpose of the reference in the act of 1871 to

this act of July 25, 1866. The special provisions of section 1, which apply to the "said bridge" across the Mississippi river at Quincy, Illinois, were not intended to apply to the Omaha bridge. They are inconsistent with the use and operation of the bridge by the Union Pacific, as provided for in the acts of 1862, 1864 and 1871. The proposition of the complainant necessarily must go to this length, that the reference in the Omaha Bridge act of 1871 to the act of July 25, 1866, and provisions of section 1 of that act, above quoted, was intended to authorize and did authorize the Union Pacific Railway Company to transfer its franchise to operate its bridge to another company or companies. The rule of law is clear that such authorization of the transfer of a franchise, which is always personal in its nature, and which cannot be transferred without express statutory authority, must be clear and unequivocal and not left to implication or conjecture. Every intendment will be against construing a statute as authorizing such a transfer unless the authority to make it is unequivocally given. It is too clear for argument that such is not the fact in the present case. The provisions of section 1 of the act of July 25, 1866, are not general but special, and by their terms apply only to the bridge across the Mississippi river at Quincy, Illinois. To construe the reference in the act of February 24, 1871, to this act of 1866, so as to make these provisions, which, by their very terms, apply only to the bridge at Quincy, apply also to the Omaha bridge, is to do violence to all rules of construction. Further, to construe them as authorizing the Union Pacific Railway Company to transfer to other companies the franchise to operate its Omaha bridge is clearly inconsistent with the numerous provisions of the acts of 1862, 1864 and 1871, above referred to.

The Union Pacific Railway Company not only

had full power under the acts of 1862 and 1864 above quoted, to build and operate the Omaha bridge as part of its railroad, but by the act of July 1, 1862, § 14, it was expressly required so to do. The acts of 1862 and 1864 both make special provisions as to the use and operation of the whole line of the Union Pacific railroad. The grants of franchises, of rights of way, of lands and of bond subsidies were all made (act July 1, 1862, § 6, 12 Stat., 489, and *supra*) upon condition that the Union Pacific keep its line of railroad in repair and use; that the Government have the preference in the use of the same; that compensation for Government business be retained and applied to the repayment of United States subsidy, and a percentage of net earnings of the railroad be also likewise applied. All these special provisions apply to the Union Pacific railroad; and the Union Pacific is under obligation to comply with them on penalty of forfeiture. The Omaha Bridge act provides that nothing in it shall be construed as releasing the Union Pacific from these obligations as they existed prior to that act. Now, in order to perform these obligations, the Union Pacific must itself exclusively control and operate its Omaha bridge. Unless it does so, it cannot give the Government the preference in its use, nor can it perform its duties to the public and the Government. All these special provisions of the Union Pacific charter are inconsistent with any use of the bridge by other railroad companies. Therefore, the special provision of the act of July 25, 1866, which by its very terms applies only to "said bridge" at Quincy, Illinois, has no application to the Union Pacific bridge at Omaha. This is so by the ordinary rules of construction, but it is also made doubly sure in the present case by the qualifications in the Omaha Bridge act of 1871, *supra*, which applies to the Omaha bridge the provisions of the act of July 25,

1866, only "so far as the same is applicable thereto." Such operation of the bridge by other companies would disable the Union Pacific from carrying out its charter obligations to the public and to the Government. It would prevent the company from operating or giving the Government the preference in the use of the railroad. If the bridge remains in the hands of the Union Pacific the Government is entitled to control its use, but if the company may make a valid lease the Government has no control over the lessee. It would prevent the Union Pacific from operating its whole line of railroad as expressly required by law as a continuous line of railroad. In short, it would *pro tanto* be an abandonment of its corporate business and corporate property by the Union Pacific. It is perfectly clear, therefore, that the provisions of section 1 of the act of July 25, 1866, have no application to the Omaha bridge.

But we are not left alone to general principles of construction in determining this question. The Supreme Court of the United States has expressly decided that even the general provisions of the act of July 25, 1866, have no application to the Omaha bridge of the Union Pacific Railway Company where provisions have been made by the acts of 1862, 1864 and 1871 above referred to. In the case of Union Pacific Railway Company *vs.* United States, 117 U. S., 355, it was contended by the United States that the provisions of section 3 of the act of July 25, 1866, providing that "upon any bridge coustructed under this act no higher charge shall be made over the same for the mails, troops and the munitions of war of the United States than the rate per mile paid for transportation over the railroads or public highways leading to the said bridge"—applied to the Omaha bridge of the Union Pacific Railway Company, and that the Union Pacific Railway Company under this act could not

charge any greater rate per mile upon its Omaha bridge than upon any other part of its railroad. But the Supreme Court decided that this provision had no application to the Omaha bridge, but that the rates upon that bridge were governed by section 6 of the act of July 1, 1862, which provides "that the Union Pacific Railroad Company should transport mails, troops, munitions of war, supplies, and public stores upon said railroad for the Government * * * at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service;" and that under this section the Union Pacific Railway Company could charge the Government a greater rate per mile upon the Omaha bridge than upon the other parts of its railroad provided such rate was fair and reasonable, and did not exceed the rate charged to private parties. In that case the court says (p. 361):

> "The Omaha bridge of the Union Pacific Railway Company was not constructed under the act of 1866. It was constructed under the original acts incorporating the company—the acts of July 1, 1862, and July 2, 1864, and the act of February 24, 1871; and the reference in the last-named act to the act of 1866 was for the purpose of extending the provisions of the latter so far as necessary to confer additional powers upon the railway company for the use and protection of the bridge, and contains no evidence of any intent on the part of Congress to change the rules as to rates of transportation over the line of the railway company as prescribed by section 6 of the act of July 1, 1862."

The substance of this decision was, therefore, that even the general provisions of the act of July 25, 1866, do not apply to the Omaha bridge, but, on the contrary, that that bridge was governed by the pro-

visions of the acts of 1862 and 1864, and 1871, above referred to, wherever such provisions existed. Much less do the special provisions of the act of July 25, 1866—which by their very terms applied only to the bridge across the Mississippi river at Quincy—have any application to the Omaha bridge.

The Union Pacific Railway Company, therefore, had no authority to lease its Omaha bridge or to grant to another company or companies a right to a joint use of that bridge; while, as we show, *supra*, even if it had authority to make a lease or grant of joint use of the Omaha bridge, it had no authority to lease or grant the use of the remaining part of the ten miles of its railroad which the contract of May 1, 1890, purports to grant. For these reasons that contract is void and unenforceable.

**Extract from Brief for Appellants (Pages 40 to 58, inclusive), in the Supreme Court of the United States, in the Case of Union Pacific Railway Company et al., Appellants, v. Chicago, Rock Island & Pacific Railway Company et al., Appellees.**

IV.

NO CHARTER AUTHORITY TO MAKE THE ALLEGED CONTRACT OF MAY 1, 1890.

The Union Pacific Railway Company had no statute or charter authority to make the contract in question. It is unnecessary to refer at length to the orignal charter of the company, act of July 1, 1862, 12 Stat., 489, or to the various acts amendatory thereof. It is sufficient to say that nowhere in any of these acts is any authority conferred upon the Union Pacific Railway Company to lease any part of its railroad or to make any contract for the joint

use of its railroad by any other company. On the contrary, there are many provisions expressly requiring the Union Pacific Company itself to operate its railroad and telegraph, and to exercise the franchises necessary and incident to such operation. We give here a brief analysis of some of these provisions.

The act of July 1, 1862, § 1, 12 Stat., 489, authorized the Union Pacific Railroad Company to construct and operate what was called the main line of railroad from a point on the 100th meridian of the western boundary of the Territory of Nevada, and was "vested with all the powers, privileges and immunities necessary to carry into effect the purposes of this act as herein set forth." Section 6 of the same act provides:

> "SEC. 6. *And be it further enacted*, That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line and transport mail, troops and munitions of war, supplies and public stores upon said railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service); and all compensation for the services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, Treasury notes or other evidences of debt against the United States, to

be allowed at par; and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof."

This section was amended by sec. 5 of the act of July 2, 1864, 13 Stat., 356, so

"that only one-half of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said roads."

Section 14 of the same act required the Union Pacific to construct and operate that part of its railroad now in question.

"SEC. 14. *And be it further enacted*, That the said Union Pacific Railroad Company is hereby authorized and required to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa, upon the most direct and practicable route, to be subject to his approval, so as to form a connection with the lines of said company at some point on the one hundredth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of Iowa, upon the same terms and conditions in all respects as are contained in this act for the construction of the said railroad and telegraph first mentioned. * * * Provided, that a failure upon the part of said company to make said connection in the time aforesaid, and to perform the obligations imposed on said company by this section and to operate said road in the same manner as the main line shall be operated, shall forfeit to the Government of the United States all the rights,

privileges and franchises granted to and conferred upon said company by this act."

Section 17 also of the same act provides for a forfeiture in case the Union Pacific shall fail to keep its railroad in repair and use.

Section 9 of the act of July 2, 1864, 13 Stat., 356, gave special authority to the Union Pacific Railroad Company to construct its bridge over the Missouri river; though, as was decided in Union Pacific R. R. Co. *v.* Hall, 91 U. S., 343, 350, such authority was also sufficiently conferred and construction required by those parts of the act of July 1, 1862, above quoted. Section 9 of the act of July 2, 1864, provides as follows:

> "SECTION 9. *And be it further enacted*, That to enable any one of said corporations to make convenient and necessary connections with other roads, it is hereby authorized to establish and maintain all necessary ferries upon and across the Missouri river and other rivers which its road may pass in its course; and authority is hereby given said corporation to construct bridges over said Missouri river and all other rivers for the convenience of said road."

The charter of the Union Pacific expressly requires the company to operate its whole line of railroad (including the ten miles of railroad with the Omaha bridge, which the alleged contract of May 1, 1890, purports to allow the complainant to operate) as one continuous line. Section 12 of act of July 1, 1862, 12 Stat., 489, provides:

> "The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel and transportation so far as the public and Government are concerned, as one connected, continuous line."

Section 15 of act of July 2, 1864, 13 Stat., 356, also provides:

> "*And be it further enacted*, That the several companies authorized to construct the aforesaid roads, are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and Government are concerned, as one continuous line."

This court, by Mr. Justice Harlan, in United States *vs.* Union Pacific Ry. Co. and Western Union Tel. Co., 160 U. S., 1, 28, says:

> "What we have said as to the objects that Congress intended to accomplish by aiding the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean is based upon sections one to eighteen inclusive, of the act of July 1st, 1862, and upon the provisions of the amendatory acts of July 2nd, 1864, c. 216, and June 20th, 1874, 18 Stat., 111, c. 331. If we look alone to those sections and provisions, the conclusion must be that any company named in the act of 1862 and receiving the aid therein granted by the Government, was required itself, and through its own officers and employees, to construct, maintain and operate both a railroad and telegraph line, and could not assign or transfer to any other corporation its franchises in that regard."

See further in same opinion:

> "In this view it must be held that, by its reservation of authority to add to, alter, amend or repeal the acts in question whenever it chose so to do, Congress, subject to the limitation that rights actually vested or transactions fully consummated, could not be disturbed, intended to

keep within its control the entire subject of railroad and telegraphic communication between the Missouri river and the Pacific ocean, through the agency of corporations created by it, or that had accepted the bounty of the Government. It was never intended that the railroad companies, accepting such bounty, should be able, by any contract or arrangement with telegraph companies, to discharge themselves for all time, and beyond the authority of Congress otherwise to provide, from the obligation to exercise by their officers and agents exclusively, the telegraphic franchises received by them from the National Government."

In addition to the express provisions of the Union Pacific charter above quoted, a special act was passed known as the "continuous-line act," approved June 20, 1874, 18 Stat., 111, as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there shall be, and is hereby, added to the fifteenth section of the act approved July second, eighteen hundred and sixty-four, entitled 'An act to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1, eighteen hundred and sixty-two,' the following words, namely:

'And any officer or agent of the company authorized to construct the aforesaid roads, or of any company engaged in operating either of said roads, who shall refuse to operate and use the road or telegraph under his control or which he is engaged in operating for all purposes of communication, travel and transportation, so

far as the public and the Government are concerned, as one continuous line, or shall refuse in such operation and use to afford and secure to each of said roads equal advantages and facilities as to rates, time or transportation, without any discrimination of any kind in favor of, or adverse to, the road or business of any or either of said companies, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and may be imprisoned not less than six months. In case of failure or refusal of the Union Pacific Railroad Company, or either of said branches, to comply with the requirements of this act and the acts to which this act is amendatory, the party injured or the party aggrieved may bring an action in the district or circuit court of the United States in the Territory, district or circuit in which any portion of the road of the defendant may be situated, for damages on account of such failure or refusal; and, upon recovery, the plaintiff shall be entitled to judgment for treble the amount of all excess of freight and fares collected by the defendant, and for treble the amount of damages sustained by the plaintiff by such failure or refusal; and for each and every violation of or failure to comply with the requirements of this act, a new cause of action shall arise; and in case of suit in any such Territory, district or circuit, process may be served upon any agent of the defendant found in the Territory, district or circuit in which such suit may be brought, and such service shall be by the court held to be good and sufficient; and it is hereby provided that for all the purposes of said act, and of the acts amendatory thereof, the railway of the Denver Pacific Railway and Tele-

graph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific railroad, to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March third, eighteen hundred and sixty-nine.'"

The "Thurman act," May 7, 1878, 20 Stat., 56, also provides:

> "SECTION 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney General to cause such forfeiture to be judicially enforced."

The Union Pacific, therefore, is expressly required by its charter and by statute to operate the whole of its railroad as "one continuous line." This requires the Union Pacific to operate its railroad between Council Bluffs and Omaha as a part of "one continuous line," and the company has no authority to delegate to any other company the operation of that part of its road or any other part, for by so doing the Union Pacific would fail to operate its road as one continuous line as it is required to operate it. This court has decided that such is the construction of these charter provisions and statutes, and that the Omaha bridge is part of the Union Pacific railroad, and must be operated as such.

> Union Pacific Railroad Company *vs.* Hall, 91 U. S., 343; S. C. in circuit court, 4 Dillon, 479.
> See also Union Pacific Ry. Co. *vs.* United States, 117 U. S., 355, 361.

So far, therefore, as the Union Pacific railway generally is concerned, the company had no charter or statute authority to make the alleged contracts.

### No Authority to Lease Omaha Bridge.

But the appellees may insist that though the Union Pacific had no authority to lease its railroad generally, it did have authority to lease that part of it which is known as its Omaha bridge; and to show such authority will cite the Omaha Bridge act of February 24, 1871, 16 Stat., 430. But unless the Omaha Bridge act of 1871 in some way releases the Union Pacific from the obligations imposed by the prior acts of July 1, 1862, and July 2, 1864, to operate the Omaha bridge as a part of its railroad, the Omaha bridge cannot be operated in any different manner from the rest of its line of railroad. We shall see that the act of 1871 does not attempt to do so; but, on the contrary, the act expressly provides that nothing in the act shall be construed as releasing the Union Pacific from its obligations as established by existing laws.

Further, even if it were true that a lease of the bridge, or the contract of April 30 and May 1, 1890, so far as the bridge is concerned, were authorized by the act of 1871, yet neither that act nor any other act authorizes a lease or contract for the use by any other company of any other part of the Union Pacific railroad. The contracts purport to grant a joint use not merely of the Omaha bridge, but of the railroad, about eight miles in length, of the Union Pacific between Council Bluffs, South Omaha, and Omaha (contract, art. I, sec. 1, Record, p. 16); and the rental is stated as a consideration for the entire ten miles of railroad. Hence, the contracts are void as to that part of the Union Pacific railroad which is not the Omaha bridge; and as the contract is thus void in part, and the void part and the consideration

therefor are not capable of separation from the rest, the contract is void throughout.

We proceed, however, to consider the Omaha Bridge act of February 24, 1871, and to show that it does not authorize the said contracts purporting to grant to complainants the joint use of the bridge.

OBJECT OF OMAHA BRIDGE ACT.—Before considering the text of that act it is well to note the exact condition of the legislation down to the date of the act. The construction of the bridge had not only been already fully authorized and required, as above shown, but the bridge was then partly constructed. This act was passed, as its title states, in order to enable the company to issue a separate series of bonds secured by a separate mortgage on the bridge instead of allowing the company to issue only its regular mortgage bonds at the same rates per mile as they could be issued upon the ordinary parts of its railroad. The obvious reason for this was that the bridge cost a far larger sum per mile than the ordinary railroad. The Omaha Bridge act is as follows:

**"An Act to Authorize the Union Pacific Railroad Company to Issue its Bonds to Construct a Bridge Across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa.**

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That for the more perfect connection of any railroads that are or shall be constructed to the Missouri river, at or near Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company be, and it is hereby, authorized to issue such bonds, and to secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to

construct and maintain its bridge over said river and the tracks and depots required to perfect the same, as now authorized by law of Congress; and said bridge may be so constructed as to provide for the passage of ordinary vehicles and travel; and said company may levy and collect tolls and charges for the use of the same; and for the use and protection of said bridge and property, the Union Pacific Railroad Company shall be empowered, governed and limited by the provisions of the act entitled, 'An act to authorize the construction of certain bridges, and to establish them as post-roads,' approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto: *And provided*, That nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company, or its successors, from its obligation as established by existing laws: *Provided also*, That Congress shall at all times have power to regulate said bridge, and the rates for the transportation of freight and passengers over the same, and the local travel hereinbefore provided for. And the amount of bonds herein authorized shall not exceed two and a half millions of dollars: *Provided*, That if said bridge shall be constructed as a draw-bridge, the same shall be constructed with spans of not less than two hundred feet in length in the clear on each side of the central or pivot pier of the draw."

Approved February 24th, 1871.

OBLIGATION OF UNION PACIFIC ITSELF TO OPERATE ITS WHOLE LINK OF RAILROAD NOT CHANGED BY OMAHA BRIDGE ACT.

Note that this act provides:

> "That nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company, or its successors, from its obligation as established by existing laws."

The eastern terminus of the Union Pacific railroad had been fixed by executive orders of President Lincoln, dated November 17, 1863, and March 7, 1864, upon the Iowa bank of the Missouri river opposite Omaha, in accordance with sec. 14, act July 1, 1862, 12 Stat., 489, above referred to (see U. P. R. R. Co. vs. Hall, 91 U. S., 343, 349). "Its obligation as established by existing laws," as is shown by the above extracts from the acts of July 1, 1862, and July 2, 1864, was itself to use and operate its whole line of railroad, including the Omaha bridge; to give the United States the preference in the use of the same; and to pay a percentage of its net earnings to the United States. Upon a failure so to operate its railroad, its rights, privileges and franchises were to be forfeited to the United States. The Omaha Bridge act provides that the act shall not be construed as releasing the Union Pacific from any of these obligations. There is, therefore, clearly no authority in this Omaha Bridge act for the Union Pacific to make the contract or lease now in question, unless such authority be contained in the provision of the act that

> "For the use and protection of said bridge and property the Union Pacific Railroad Company shall be empowered, governed and limited

by the provisions of the act entitled 'An act to authorize the construction of certain bridges, and to establish them as post roads,' approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto."

In regard to this clause, it is to be noted that it is immediately followed and controlled by the proviso above quoted that nothing in the act shall be construed as changing the eastern terminus of the Union Pacific railroad, nor as releasing the company from any of its obligations as established by existing laws. Whatever there may be in the act of July 25, 1866, above mentioned, is therefore controlled by this proviso. There can be no doubt whatever that under the laws existing at the date of the Omaha bridge act the "obligation" of the Union Pacific was itself to operate its whole line of railroad, including the Omaha bridge, and that it could not release itself from this obligation by attempting to delegate the operation of its railroad or part of its railroad to any other company or person. The Omaha bridge act expressly provides that nothing in it contained shall release the Union Pacific from this obligation. This is the clear and positive language of the act, and controls anything that may be found in the act of July 25, 1866. The Omaha bridge act of 1871, therefore, in connection with the act of July 25, 1866, does not authorize the Union Pacific Company to delegate to any other company the duty and obligation to operate its Omaha bridge. We proceed to consider this act of July 25, 1866, in connection with the Omaha bridge act, and to show that it does not authorize the Union Pacific Company to lease its Omaha bridge; while, as we have already pointed out, *supra*, even if it did authorize a lease of the bridge, neither it nor any other act authorizes the Union Pacific to lease the remaining six or seven miles of the ten

miles of its railroad which the contract purports to lease; and, therefore, on that ground the contract is void.

The part of the act of July 25, 1866, which complainant may urge as giving the Union Pacific a right to lease the Omaha bridge, as provided in the alleged contract, is as follows (14 Stat., 244):

> "That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose to build a bridge across the Mississippi river at Quincy, Illinois, and to lay on and over said bridge railway tracks for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge, under the limitations and conditions hereinafter provided. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said river, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches."

Note that this is purely a bridge act. The first section of the act above quoted authorizes the building of a certain bridge across the Mississippi river at Quincy, Illinois. Under this act a bridge could be built by a bridge company, or by an individual or individuals, provided they had the requisite State authority. The object of this section clearly is to authorize the erection of a bridge by any person or corporation at the point named and to provide for the use of THIS PARTICULAR BRIDGE. The Omaha bridge act of

1871, which provides that "for use and protection of said bridge and property the Union Pacific Railroad Company shall be empowered, governed and limited by the provisions of the act of July 25, 1866, so far as the same is applicable thereto," has no reference to these special provisions of the act of July 25, 1866, which apply only to "said bridge," across the Mississippi river at Quincy, Illinois. The only object of the reference in the Omaha bridge act to the act of July 25, 1866, as this court has expressly decided, was to make the general provisions of the act of July 25, 1866, apply to the Omaha bridge so far as these general provisions were not inconsistent with the provisions of the acts of July 1, 1862, and July 2, 1864, and February 24, 1871. The Omaha bridge act did not intend to make any of the special provisions of the act of July 25, 1866, apply to the Omaha bridge, nor, as this court has expressly decided, did it intend to make even the general provisions of that act apply in any case where they were inconsistent with the provisions of the acts of 1862, 1864 and 1871, above referred to, nor where these acts made sufficient and ample provisions with reference to the Omaha bridge. The only provisions of the act of July 25, 1866, which have any application to the Omaha bridge are sections two and three. Section 2 provides, in regard to the character of the structure, the spans of its drawbridges, opening of drawbridges, &c. Section 3 provides that the bridge shall be a lawful structure and known as a post route. Those provisions, which are general in their character, were designed to accomplish two purposes—1st, to regulate the character and use or operation of the bridges mentioned, as bridges across navigable rivers are generally used and operated, so as not to interfere with navigation; and, 2d, subject to these limitations and provisions, to authorize the bridge and make it a lawful structure where

otherwise it might be a nuisance; and, 3d, to make it a post route with all the protection which the laws of the United States give to such post route as an agency of the Government. These provisions were intended to apply to the bridges mentioned by whatever person or company they were owned and operated. They apply to the bridges designated in the act of July 25, 1866; and so far as no special provision had been made in the acts of 1862, 1864 and 1871, above referred to, and so far as they were not inconsistent with the provisions of those acts they were intended to apply to the Omaha bridge. This was the purpose and the only purpose of the reference in the act of 1871 to this act of July 25, 1866. The special provisions of section 1, which apply to the "said bridge" across the Mississippi river at Quincy, Illinois, were not intended to apply to the Omaha bridge. They are inconsistent with the use and operation of the bridge by the Union Pacific, as provided for in the acts of 1862, 1864 and 1871. The proposition of the complainant necessarily must go to this length, that the reference in the Omaha bridge act of 1871 to the act of July 25, 1866, and provisions of section 1 of that act, above quoted, was intended to authorize, and did authorize, the Union Pacific Railway Company to transfer its franchise to operate its bridge to another company or other companies. The rule of law is clear that such authorization of the transfer of a franchise, which is always personal in its nature, and which cannot be transferred without express statutory authority, must be clear and unequivocal and not left to implication or conjecture. Every intendment will be against construing a statute as authorizing such a transfer unless the authority to make it is unequivocally given. It is too clear for argument that such is not the fact in the present case. The provisions of section 1 of the act of July 25, 1866, are not

general but special, and by their terms apply only to the bridge across the Mississippi river at Quincy, Illinois. To construe the reference in the act of February 24, 1871, to this act of 1866 so as to make these provisions, which, by their very terms, apply only to the bridge at Quincy, apply also to the Omaha bridge, is to do violence to all rules of construction. Further, to construe them as authorizing the Union Pacific Railway Company to transfer to other companies the franchise to operate its Omaha bridge is clearly inconsistent with the numerous provisions of the acts of 1862, 1864 and 1871 above referred to.

The Union Pacific Railway Company not only had full power under the acts of 1862 and 1864, above quoted, to build and operate the Omaha bridge as part of its railroad, but by the act of July 1, 1862, § 14, it was expressly required so to do. The acts of 1862 and 1864 both made special provisions as to the use and operation of the whole line of the Union Pacific railroad. The grants of franchises, of rights of way, of lands and of bond subsidies were all made (act July 1, 1862, § 6, 12 Stat., 489, and *supra*) upon condition that the Union Pacific keep its line of railroad in repair and use; that the Government have the preference in the use of the same; that compensation for Government business be retained and applied to the repayment of United States subsidy, and a percentage of net earnings of the railroad be also likewise applied. All these special provisions apply to the Union Pacific railroad; and the Union Pacific is under obligation to comply with them on penalty of forfeiture. The Omaha bridge act provides that nothing in it shall be construed as releasing the Union Pacific from these obligations as they existed prior to that act. Now, in order to perform these obligations, the Union Pacific must itself exclusively control and operate its Omaha bridge. Unless it does so, it cannot give the Government the prefer-

ence in its use, nor can it perform its duties to the public and the Government. All these special provisions of the Union Pacific charter are inconsistent with any use of the bridge by other railroad companies. Therefore, the special provision of the act of July 25, 1866, which by its very terms applies only to "said bridge" at Quincy, Illinois, have no application to the Union Pacific bridge at Omaha. This is so by the ordinary rules of construction, but it is also made doubly sure in the present case by the qualifications in the Omaha bridge act of 1871, *supra*, which act applies to the Omaha bridge the provisions of the act of July 25, 1866, only "so far as the same is applicable thereto." Such operation of the bridge by other companies would disable the Union Pacific from carrying out its charter obligations to the public and to the Government. It would prevent the company from operating or giving the Government the preference in the use of the railroad. If the bridge remains in the hands of the Union Pacific the Government is entitled to control its use, but if the company may make a valid lease the Government has no control over the lessee. It would prevent the Union Pacific from operating its whole line of railroad as expressly required by law as a continuous line of railroad. In short, it would *pro tanto* be an abandonment of its corporate business and corporate property by the Union Pacific. It is perfectly clear, therefore, that the provisions of section 1 of the act of July 25, 1866, have no application to the Omaha bridge.

But we are not left alone to general principles of construction in determining this question. This court has expressly decided that even the general provisions of the act of July 25, 1866, have no application to the Omaha bridge of the Union Pacific Railway Company where provisions have been made by the acts of 1862, 1864 and 1871, above re-

ferred to. In the case of Union Pacific Railway Company *vs.* United States, 117 U. S., 355, it was contended by the United States that the provisions of section 3 of the act of July 25, 1866, providing that "upon any bridge constructed under this act no higher charge shall be made over the same for the mails, troops and the munitions of war of the United States than the rate per mile paid for transportation over the railroads or public highways leading to the said bridge"—applied to the Omaha bridge of the Union Pacific Railway Company, and that the Union Pacific Railway Company under this act could not charge any greater rate per mile upon its Omaha bridge than upon any other part of its railroad. But the Supreme Court decided that this provision had no application to the Omaha bridge, but that the rates upon that bridge were governed by section 6 of the act of July 1, 1862, which provides that "the Union Pacific Railroad Company should transport mails, troops, munitions of war, supplies and public stores upon said railroad for the Government * * * at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service;" and that under this section the Union Pacific Railway Company could charge the Government a greater rate per mile upon the Omaha bridge than upon other parts of its railroad provided such rate was fair and reasonable and did not exceed the rate charged to private parties. In that case the court says (p. 351):

> "The Omaha bridge of the Union Pacific Railway Company was not constructed under the act of 1866. It was constructed under the original acts incorporating the company—the acts of July 1, 1862, and of July 2, 1864, and the act of February 24, 1871; and the reference in the last-named act to the act of 1866 was for the purpose of extending the provisions of the

latter so far as necessary to confer additional powers upon the railway company for the use and protection of the bridge, and contains no evidence of any intent on the part of Congress to change the rules as to rates of transportation over the line of the railway company as prescribed by section 6 of the act of July 1, 1862."

The substance of this decision was, therefore, that even the general provisions of the act of July 25, 1866, do not apply to the Omaha bridge, but, on the contrary, that that bridge was governed by the provisions of the acts of 1862 and 1864 and 1871, above referred to, wherever such provisions existed. Much less do the special provisions of the act of July 25, 1866,—which by their very terms applied only to the bridge across the Mississippi river at Quincy—have any application to the Omaha bridge.

The Union Pacific Railway Company, therefore, had no authority to lease its Omaha bridge or to grant another company or other companies a right to a joint use of that bridge; while, as we show, *supra*, even if it had authority to make a lease or grant of joint use of the Omaha bridge, it had no authority to lease or grant the use of the remaining part of the ten miles of its railroad which the contracts of April 30 and May 1, 1890, purport to grant. For these reasons those contracts are void and unenforceable.

# Supreme Court of the United States.

No. 18.—October Term, 1905.

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| Union Pacific Railroad Company, Appellant, *vs.* Mason City and Fort Dodge Railroad Company | Appeal from the United States Circuit Court of Appeals for the Eighth Circuit. |

[November 6, 1905.]

On a bill filed by the Mason City and Fort Dodge Railroad Company, (hereinafter called the Mason City Company,) the Circuit Court of the United States for the District of Nebraska entered a decree, August 19, 1903, (124 Fed. Rep. 409,) requiring the Union Pacific Railroad Company (hereinafter, called the Union Pacific Company) to let the plaintiff into the joint use of the railroad bridge between Omaha and Council Bluffs, and the approaches thereto. On appeal this decree was affirmed by the Circuit Court of Appeals for the Eighth Circuit, February 29, 1904. (64 C. C. A. 348.) Thereupon the Union Pacific Company appealed to this court.

Mr. Justice Brewer delivered the opinion of the Court.

The Mason City Company contends that its right to the use of the bridge and approaches was determined by the decision of this court in *Union Pacific Railway Company* v. *Chicago etc. Railway Company et al.*, 163 U. S. 564. And further, that if mistaken in this contention it has that right under the statutes of the United States, and by the terms of a contract between the Union Pacific Railroad Company, on the one hand, and the city of Omaha and County of Douglass, Nebraska, on the other. The case in 163 U. S. arose on two contracts, one between the Union Pacific Railway Company and the Chicago, Rock Island and Pacific Railway Company, and the other between the first named company and the Chicago, Milwaukee and St. Paul Railway Company. The opinion of the Circuit Court (47 Fed. Rep. 15) considered only the contracts, sustained them, and entered a decree for the plaintiffs, awarding the joint use of the bridge and its approaches. That decree was affirmed by the Circuit Court of Appeals, (2 C. C. A. 174,) and the case was thereupon brought on appeal to this court. Here the decision was rested not simply on the contracts but also on an obligation held to have been imposed on the defendant by the statutes of the United States, the court saying (p. 586:)

"For the provisions of the Pacific Railroad acts relating to the bridge over the Missouri River, its construction and operation, imposed on the Pacific Company the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and the tracks between Council Bluffs and Omaha, and, we think, that South Omaha was included."

This was followed by several paragraphs pointing out the statutes imposing the duty. Counsel for the Union Pacific Company in the case at bar earnestly contend that so much of that opinion, as referred to this statutory obligation, was *obiter dictum*, that the statutes were misconstrued, and also that the status of the present Union Pacific Company differs so much from that of the then defendant as to make the ruling inapplicable.

We are unable to yield our assent to these contentions. While the claim of the plaintiffs in that case was founded directly upon contracts, yet if there were a statutory duty to let them into the joint use of the bridge and its approaches that was enough to sustain a decree in their favor, and the contracts might be regarded as simply relieving the court of the work of settling minor matters, such as method of use, compensation therefor, and matter of control. Indeed, the alleged invalidity of the contracts was rested largely on the scope of the statutes, and the duties to the Government and the public imposed thereby on the railroad company. Of course, where there are two grounds, upon either of which the judgment of the trial court can be rested, and the appellate court sustains both, the ruling on neither is *obiter*, but each is the judgment of the court and of equal validity with the other. Whenever a question fairly arises in the course of a trial, and there is a distinct decision of that question, the ruling of the court in respect thereto can, in no just sense, be called mere dictum. *Railroad Companies* v. *Schutte*, 103 U. S. 118, in which this court said (p. 143):

"It cannot be said that a case is not authority on one point because, although that point was properly presented and decided in the regular course of the consideration of the cause, something else was found in the end which disposed of the whole matter. Here the precise question was properly presented, fully argued and elaborately considered in the opinion. The decision on this question was as much a part of the judgment of the court as was that on any other of the several matters on which the case as a whole depended."

Further, we see no reason to question the conclusion announced in the former opinion. Chap. 67 of the Laws of Congress, 1871, (16 Stat. 430,) granting power to issue bonds for the construction of the bridge, provided that "for the use and protection of said bridge and property, the Union Pacific Railway Company shall be empowered, governed and limited by the provisions of the act entitled 'An act to authorize the construction of certain bridges, and to establish them as post roads,' approved July twenty-

five, eighteen hundred and sixty-six, so far as the same is applicable thereto."

The act referred to in this quotation (14 Stat. 244) authorized the construction of nine bridges, as to the first of which (a bridge across the Mississippi River at Quincy) it was stated that "when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge."

To the seven provided for by succeeding sections authority is granted "upon the same terms, in the same manner, under the same restrictions, and with the same privileges as is provided for in this act in relation to the bridge at Quincy, Illinois."

The remaining one of the nine bridges (that over the Mississippi River at St. Louis) was to be constructed by the St. Louis and Illinois Bridge Company, "subject to all the conditions contained in said act of incorporation and amendments thereto, and not inconsistent with the following terms and provisions contained in this act."

It is insisted that the act of 1871 makes applicable to the Omaha bridge only the two or three provisions in the act of 1866 common to all the bridges named therein, and as the section authorizing the bridge at St. Louis contained no direction for its use by terminating railroads, that requirement, although imposed on all the other bridges, was not brought into the act of 1871, and is inapplicable to the Omaha bridge. Counsel for the Union Pacific Company have also called our attention to a few statutes authorizing the construction of bridges which contain no provision in respect to use by other railroad companies. As against this, counsel for the Mason City Company have cited over 350 acts, to be found in the several statutes of Congress, from the fifteenth to the thirty-second volume, in each of which there is a direction for use by other companies. Obviously, that was the general policy of Congress, and the few exceptions thereto were dictated by the peculiar circumstances of the cases.

Bearing in mind this general policy of the Government, we think it a fair construction of the act of 1871 that incorporating, as it did, the provisions of the act of 1866, it must have intended to incorporate not merely those in terms applicable to all the bridges, but also one in harmony with that general policy and applicable to substantially all, and this, although in reference to a single bridge, other and special directions were made. Aside, therefore, from any reliance upon the doctrine of *stare decisis*, the act of 1871 must be considered as requiring the Union Pacific Company to permit the trains of all roads terminating at the Missouri River at Omaha to use its bridge up to the fair limits of capacity, and on payment of reasonable compensation.

It may be remarked in passing that it is expressly conceded in this case by the Union Pacific Company that there is no question of the reasonableness of the compensation tendered, or the capacity of the bridge and approaches for the service asked by the Mason City Company.

The final question is this: Is the status of the present Union Pacific Railroad Company, the appellant, so different from that of the company to which it is a successor as to render inapplicable the decision in the Rock Island case and to nullify the requirements of the act of 1871?

What are the facts? The acts of Congress, July 1, 1862, (12 Stat. 489;) July 2, 1864, (13 Stat. 356,) creating the Union Pacific Railroad Company, authorized it to mortgage its road for $16,000 a mile, (increased to $48,000 a mile in the mountainous districts,) and loaned the credit of the United States for an equal amount, secured by a second lien on the property. The initial point of the main line of the Pacific Railroad was fixed on the Iowa bank of the Missouri River opposite the city of Omaha. *Union Pacific Railroad Company* v. *Hall et al.*, 91 U. S. 343. On March 1, 1865, the Union Pacific Railroad Company executed its first mortgage, conveying its entire line from the western boundary of the State of Iowa to its western terminus. This mortgage in terms included the road "heretofore constructed or hereafter to be constructed." The act of 1871 authorized a mortgage of not exceeding two and a half million of dollars to raise money for the construction of the bridge. This mortgage was executed, the money raised and the bridge built. The act of 1862, section 18, provided that "the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, . . . Congress may, at any time, having due regard for the rights of said companies named herein, add to, alter, amend or repeal this act." The act of 1864, which was an amendment of the act of 1862, in section 22 preserved the right of Congress to at any time "alter, amend or repeal this act." It also, in section 9, gave express authority to the company to maintain ferries or construct bridges over the Missouri River. The mortgage of 1865 was foreclosed, and the present appellant, the Union Pacific Company, a corporation organized under the laws of Utah, became the purchaser. The contention now is that as this mortgage antedated the act of 1871, the purchaser at the foreclosure thereof took the property freed from any burdens or obligations imposed by that act. It held the bridge as a part of its line, under no obligations to permit its use by any other company.

We shall not stop to inquire whether this foreclosure and sale was anything more than a reorganization under the form of a judicial proceeding, nor whether if it were in all respects a *bona fide* sale to an independent third party such sale took the property out of the jurisdiction of

Congress, and prevented that body from further legislation in aid of the purpose of the act, "namely, to promote the public interest and welfare." The question before us is whether an amendment to the act, purely administrative in the character of the burdens imposed, aimed to promote the public interest and welfare, enacted while the title to the property remained in the original company, a corporation chartered by Congress, which preserves intact all the pecuniary rights of the company, and whose privileges are accepted and acted upon by the company, is denuded of vitality by a sale to a new company under foreclosure of a mortgage executed prior to such legislation. That question must be answered in the negative.

The first transcontinental railroad, to wit, the Union Pacific Railroad, was a great public undertaking. Private capital was believed to be and was, in fact, unwilling to attempt it. Congress felt that the public interest required its construction. It sought to interest private capital in the enterprise, and believed that the work could be better done through the instrumentality of a corporation. At the same time it became practically the sponsor for the enterprise by large donations of Government credit and public lands. In so doing it was not seeking to aid a purely private enterprise. What it did was in furtherance of the public interests, and it reserved to itself the right to alter, amend or repeal the act in so far as was necessary to promote those interests, limiting its action by the single proviso that due regard must be had to the rights of the company. Every one who purchased the bonds of the company or gave it credit did so with full knowledge that this was a quasi-national enterprise, and that if deemed necessary by Congress the interests of the public might be promoted by additional legislation in so far as the pecuniary rights of the company and its creditors were not sacrificed. The construction of the bridge, doing away as it did with the delay and annoyance of transportation across the river by a ferry, added largely not merely to the value of the entire property, but also to the great convenience of the traveling and shipping public. The act giving authority for a large issue of bonds, thereby insuring the immediate construction of the bridge, was accompanied by a proviso that upon reasonable compensation the use of the bridge should be accorded to other companies. Availing itself of the privileges conferred the company accepted the amendment in its entirety and is bound by its terms as fully as though it had embodied them in a contract. So long as the full facilities of the Union Pacific Company were not interfered with thereby, and a reasonable compensation was paid therefor, it cannot in any just sense be held that its rights were not duly regarded. And it cannot be tolerated that a private individual or a State corporation can, by the purchase at a judicial sale of the property, strike down all the legislation of Congress passed subsequently to the mortgage for the promotion of the public interests. We cannot assent to the contention that the present owner of the

property holds it free from obedience to all such legislation. Now, as before the foreclosure and sale, the public interests are to be regarded, and not simply private purposes, wishes or prejudices.

One thing more requires notice. It is contended that the terms of the decree are too broad; that they give to the Mason City Company not merely the use of the bridge and its approaches, including therein connections with Western roads terminating at Omaha, but also the use of all side or spur tracks connecting the Union Pacific Railroad with private industries, and the track extending northward from the main line of the Union Pacific to the old ferry crossing. On the argument counsel for the appellee stated that his company made no claim to a right to use these tracks. If the language of the decree is open to this misconstruction it should be corrected, and the Circuit Court may make such correction on proper application.

*Decree affirmed.*

Mr. Justice McKenna took no part in the decision of this case.

True copy.

Test:

*Clerk Supreme Court, U. S.*